

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
	:	
THE CITY OF HUNTINGTON,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01362
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

	x	
	:	
CABELL COUNTY COMMISSION,	:	Civil Action
	:	
Plaintiff,	:	No. 3:17-cv-01665
	:	
v.	:	
	:	
AMERISOURCEBERGEN DRUG	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	

BENCH TRIAL - VOLUME 16
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

MAY 24, 2021

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1 PROCEEDINGS had before The Honorable David A. Faber,
2 Senior Status Judge, United States District Court, Southern
3 District of West Virginia, in Charleston, West Virginia, on
4 May 24, 2021, at 9:00 a.m., as follows:

5 THE COURT: Good morning, everybody.

6 ALL COUNSEL: Good morning.

7 THE COURT: Are we ready to go, Mr. Farrell?

8 MR. FARRELL: Yes, if I may have a moment, Judge.

9 THE COURT: Yes, please.

10 MR. FARRELL: On behalf of the Plaintiffs'
11 Executive Committee for MDL 2804 styled *In Re: National*
12 *Prescription Opioid Litigation* we mark the passing of
13 Mr. Paul Hanly, Jr.

14 Mr. Hanly was one of the founding fathers of this
15 litigation and served as its co-lead. He was our colleague,
16 our friend, and my mentor. He was loved and will be missed.

17 Please note my objection to his absence for the record.

18 THE COURT: Thank you, Mr. Farrell. Your comments
19 will be included in the records of the court. I appreciate
20 you.

21 Mr. Majestro.

22 MR. MAJESTRO: Good morning, Your Honor.

23 At this time, as I highlighted last week, there are
24 categories of exhibits that the parties, various parties
25 have stipulated can be admitted without the need of a

1 sponsoring witness.

2 Today we, we want to move into evidence 15 documents
3 that McKesson agreed at Paragraph 2 of the stipulation which
4 says, "Plaintiffs and McKesson stipulate that it will not
5 object to the presentation of these documents without the
6 use of a sponsoring witness at trial while reserving all
7 other evidentiary objections."

8 As will become very evident when I go through the
9 exhibits, Your Honor, these are very non-controversial.
10 Most of them are not hearsay or subject to very obvious
11 hearsay objections. A lot of them the defendants offered no
12 objection to.

13 We don't believe that we should have to have a witness
14 on the stand and disrupt witness testimony while we enter
15 these documents as exhibits into the record.

16 I understand McKesson is objecting to this, and I'll
17 let them speak from their perspective as to why they think
18 this is improper. But we believe this will make the trial
19 go quicker and make the witness testimony go smoother.

20 THE COURT: All right.

21 Mr. Schmidt, do you want to address that?

22 MR. SCHMIDT: Yes, Your Honor.

23 First of all, it's, it's not our place to comment on
24 Mr. Hanly. He was not our colleague. But we did have a lot
25 of exposure to him and it seems proper to say on our side,

1 and probably on all the defense side, we recognize the loss
2 you guys have experienced. And I hope this trial has
3 illustrated our ability to fiercely disagree and still be
4 civil to each other, and on those terms especially. We're
5 very sorry for the loss.

6 In terms of the exhibits, Your Honor, this issue has
7 come up before. It came up I think a few days ago. We
8 objected to this practice.

9 Mr. Hester pointed out that it's difficult if we try to
10 use this practice to track what's in evidence or not. It's
11 difficult to address issues that many of these documents
12 present individually in terms of embedded hearsay, in terms
13 of geographic scope issues, in terms of foundation issues.

14 It feels like we're pushing off to the Court to try to
15 sift through what's in evidence where maybe this will come
16 up again during trial, maybe it never will, and we'll be
17 bickering over this in findings.

18 I thought the Court's ruling was deal with it as it
19 comes up with witnesses. I think what the Court said was,
20 "So, Mr. Majestro, I think we can just deal with it as it
21 comes up."

22 We do think that's the better course. We have -- some
23 of these -- most of these are covered by our stipulation,
24 not all of them are. Many of them do have embedded hearsay.
25 I'm looking at the very first document which quotes a CDC

1 document, a government report, things like that.

2 And then many of them present geographic scope issues
3 that we would submit are properly addressed in the context
4 of individual witnesses where they're being used.

5 If there are documents where they really don't think
6 they have a witness and we have agreed to it, we're willing
7 to talk to them about it. But this format, moving it in
8 without going through them one by one we submit is not the
9 appropriate way to handle these exhibits.

10 THE COURT: Well, Mr. Majestro.

11 MR. MAJESTRO: Well, Your Honor, we gave them this
12 list on Friday. All we got back on Saturday -- we proposed
13 them getting back to us with any objections by Saturday. We
14 got back, "We object to the procedure."

15 Last night with respect to the routine stipulations on
16 documents for witnesses they gave us some objections, but
17 these are documents that we believe we don't need, you know,
18 for the most part, and at least all the ones I'm going
19 through are on the stipulation. And we believe they are
20 documents that can be into evidence.

21 Witnesses may or may not discuss them, but the
22 documents are admissible. And if they've got objections to
23 particular parts of it, let's slog through that now rather
24 than when we have witnesses on the stand and disrupt witness
25 testimony.

1 And I think it confuses the issue when you -- I think
2 the past couple weeks I've noticed we've gotten kind of
3 distracted between whether the witness is familiar with the
4 document that is independently admissible.

5 And, so, this is -- these are all documents that are
6 independently admissible we believe, or if they're not,
7 they're not and, and let's just go through them and get them
8 admitted into the record.

9 We don't believe we need to have a witness talk about
10 evidence in trial. If it's evidence in trial and admitted,
11 we can cite it in our proposed findings or argue it in
12 closing arguments. That's the purpose of evidence. There's
13 different kinds of evidence, and we believe documentary
14 evidence is appropriate for Your Honor to rely on and for us
15 to present.

16 MR. SCHMIDT: We're happy to talk with them about
17 these documents and about this procedure. As Mr. Majestro
18 said, we had a bit of a busy weekend having witnesses up
19 this week. We heard about this Friday night. We were asked
20 to respond by Saturday. On those terms, we said we just
21 can't, we can't respond in that time period.

22 But if we're going to go through them now, then we're
23 going to be having lengthy debates about embedded hearsay
24 and geographic scope that keep us from getting witnesses
25 sitting in the room on the stand.

1 THE COURT: Well, I want you to get together and
2 resolve as much of this as you can. I think the way to do
3 it, Mr. Majestro, is if there are serious objections other
4 than the authentication, then you need to take them up as
5 they come up so I think that would help me understand the
6 issues.

7 MR. MAJESTRO: A lot of these, Your Honor, there
8 are no objections or lack of personal knowledge is the
9 objection. And if we're not presenting it through a
10 witness, that's, that's our point.

11 THE COURT: Let's see where we go.

12 MR. MAJESTRO: Okay. Thank you, Your Honor.

13 MR. SCHMIDT: Your Honor, we do have a separate
14 document issue that we wanted to raise.

15 The Court will, of course, recall that the parties have
16 agreed to a procedure whereby at 7:00 p.m. the night before
17 they provide exhibits. We received, in addition to these 12
18 exhibits, 70 exhibits last night, 63 of which they said they
19 would definitely use.

20 It's kind of a scenario we've had repeatedly happen
21 where we get a large number of exhibits. It's very clear
22 both in quantity and quality they can't use all of these.
23 And quantity, we've never had a witness come close to that
24 many exhibits, and quality they cover things like letters
25 between one of our partners and the DEA that the witness

1 never saw, 1006 summaries he never would have seen. They've
2 literately got the performance reviews on the exhibit list
3 which have no conceivable relevance.

4 So we, we did -- I will say, to Mr. Rafferty's credit,
5 we did talk about this. We tried to work it out. Mr.
6 Rafferty communicated to us that he does intend to use these
7 all. We just don't see how that's possible in terms of the
8 volume or the quality of the exhibits given the Court's
9 prior rulings.

10 This morning, again to Mr. Rafferty's credit, we did
11 get a list of his first 25 exhibits. But our concern is
12 that we're still -- there's fluff in there. There's no way
13 they're going to be able to get through these 63 or 70
14 something exhibits.

15 And it's just frustrating the purposes of this
16 stipulation and the way we've now talked about on multiple
17 occasions, and I'm concerned that it's going to derail some
18 of the exam in terms of pointless disputes over, over
19 exhibits as they come in.

20 MR. MAJESTRO: Your Honor, I want to introduce
21 Troy Rafferty who's going to respond.

22 MR. RAFFERTY: Good morning, Your Honor.

23 THE COURT: Good morning. Yet another lawyer
24 enters this trial.

25 MR. RAFFERTY: We're multiplying.

1 So setting aside my disagreement with Mr. Schmidt in
2 terms of the admissibility of the documents, which I feel
3 everything that's on my list is admissible and admissible
4 either through the stipulation or through this particular
5 witness but, once again, the cross-examination, because it's
6 cross-examination, I don't have the opportunity to sit with
7 the witness and map it out like a direct exam and say, well,
8 he needs this. I have to have documents that I can use if
9 he takes a -- denies certain facts or denies certain things.

10 And, so, it's not a situation where I can simply say,
11 well, I'm going to ask this question, he's going to give
12 this answer, and then I don't have a document to back it up
13 because I'm limited in some form or fashion.

14 I have tried to streamline it as much as possible.
15 Every document, every document that I gave to Mr. -- in
16 fact, after me and Mr. Schmidt spoke, which we did a couple
17 times yesterday, I even went through and took out as many as
18 I could and I listed the ones that were "may use," that I
19 might use but I probably, you know, if I don't have to if
20 the witness gives the answer that I expect.

21 So, you know, it really depends on the examination and
22 which way it goes and the answers the witness gives.

23 THE COURT: Well, I don't know what I can add
24 here. It seems to me that to move the case and have it
25 streamlined, you have to take a reasonable approach to this

1 and not flood the -- your opponent with a whole bunch of
2 paper, including stuff you're not going to use.

3 So, on the other hand, I do appreciate the situation
4 you're in where although these are your witnesses, they're
5 adverse witnesses and you have a -- you don't have an
6 opportunity to prepare them like they would.

7 So I think there's something to be said for both sides
8 here, and the only way to make it work smoothly is for you
9 to get together and work it out, and I hope you'll do that.

10 MR. RAFFERTY: Yes, Your Honor. And just --

11 THE COURT: Otherwise, I'll take things up as I
12 get to them.

13 MR. RAFFERTY: Sure, Your Honor, absolutely.

14 And just so the Court knows, another reason -- another
15 factor here is we have communicated with Mr. Schmidt that we
16 are only calling -- we're, we're -- we took down one of the
17 McKesson witnesses that we intended to call, a Mr. Mahoney
18 who was on our witness list and who we stopped from coming
19 here to, to accommodate so he didn't end up traveling. We
20 decided we were only going to call Mr. Oriente and then the
21 sales rep and that would be it.

22 So unlike some of the other cases -- you know, unlike
23 ABDC and Cardinal cases, we only have the one witness which
24 also then requires a few more documents being added in. So
25 we can streamline it. We didn't want to take up the Court's

1 time with yet another witness.

2 MR. MAJESTRO: And, Your Honor, I just want to add
3 that the, the list Mr. Rafferty and Mr. Schmidt are talking
4 about includes the documents I was about ready to move to
5 admit.

6 So I don't think they can have it both ways. They
7 can't complain how many documents we try to use with a
8 witness and then object when we try to use documents without
9 a witness.

10 MR. SCHMIDT: No, I think the 63 documents that
11 they told us they will use, the documents that they do plan
12 to use, and our concern is they include things obviously
13 inadmissible; a letter with the government from a lawyer for
14 McKesson that the witness never saw, a performance review
15 for the witness from 2018 where the only purpose if it was
16 used would be to try to embarrass the witness in open court,
17 documents clearly from outside the jurisdiction.

18 We can deal with those, Your Honor, as they come up,
19 but that was, that was what prompted our concern and the
20 recurring nature of this issue.

21 MR. RAFFERTY: And, Your Honor, the DEA letters,
22 the DOJ letters that Mr. Schmidt keeps saying are clearly
23 inadmissible, Judge Polster had complete briefing on it and
24 ruled them non-hearsay and relevant and admissible.

25 So, obviously, we have some disagreements, and the

1 performance evaluations are very relevant I will put in
2 through the witness. And, obviously, if, if they're not
3 relevant, then they'll be kept out.

4 THE COURT: Well, I haven't given you much
5 guidance here, but you know how I feel about, about you
6 cooperating with each other and working together if you can.
7 So let's call a witness and get on it with it.

8 MR. RAFFERTY: Absolutely, Your Honor, happy to.

9 MR. MAJESTRO: Your Honor, one last thing.

10 We would like to make clear that Mr. Rafferty is here
11 on behalf of Cabell and Mr. Ackerman is here on behalf of
12 Huntington. And we would like the Court's indulgence with
13 letting Mr. Ackerman help respond to any of the evidentiary
14 objections as they come up.

15 Do you all object to that?

16 MR. SCHMIDT: As long as it's not burdensome, we
17 don't object.

18 THE COURT: Okay.

19 MR. SCHMIDT: We're very frightened by
20 Mr. Ackerman, but we'll live with that.

21 THE COURT: Okay, Mr. Rafferty.

22 MR. RAFFERTY: At this time, plaintiffs call
23 Michael Oriente from McKesson.

24 MR. SCHMIDT: And he's just in our little room
25 outside, Your Honor, so they're just getting him.

1 THE COURT: Okay.

2 THE CLERK: Mr. Oriente, could you please state
3 your name for the record?

4 THE WITNESS: Yes. Michael Oriente.

5 THE CLERK: Could you spell your last name?

6 THE WITNESS: Yes. O-r-i-e-n-t-e.

7 THE CLERK: Please raise your right hand.

8 **MICHAEL ORIENTE, PLAINTIFFS' WITNESS, SWORN**

9 THE CLERK: Please take a seat right there.

10 MR. RAFFERTY: May I proceed, Your Honor?

11 THE COURT: Yes, you may proceed.

12 DIRECT EXAMINATION

13 BY MR. RAFFERTY:

14 Q. Good morning, sir. Could you state your name for
15 the record, please?

16 A. Yes. My name is Michael Oriente.

17 Q. Where are you currently employed, Mr. Oriente?

18 A. I'm employed by McKesson.

19 Q. Okay. How long have you been employed by McKesson?

20 A. Since June of 2004.

21 Q. And what position did you hold when you started with
22 McKesson in 2004?

23 A. When I started, I was the Director of Operations of one
24 of McKesson's distribution centers.

25 Q. And which distribution center was that?

1 **A.** The Delran, New Jersey, distribution center.

2 **Q.** Okay. How long did you hold that position?

3 **A.** For three years.

4 **Q.** Okay. And then you moved into becoming a Director of
5 Regulatory Affairs; is that correct?

6 **A.** Yes.

7 **Q.** And have you remained Director of Regulatory Affairs in
8 some capacity with McKesson since 2007?

9 **A.** Yes, since late 2007 to present.

10 **Q.** I want to kind of break up your tenure as, in the
11 position of Director of Regulatory Affairs. Okay?

12 When you first moved to being the Director of
13 Regulatory Affairs, what was your position? What were you
14 Director of?

15 **A.** Yes. I was responsible for the northeast region.
16 McKesson had the country divided into four regions.

17 **Q.** Okay. So you were one of four?

18 **A.** There were five of us. Four of us each had a region,
19 and then there was one additional Director.

20 **Q.** Okay. Let's talk about the northeast region for just a
21 second. Tell me -- tell the Court, I'm sorry, what
22 distribution centers you were the Director of Regulatory
23 Affairs over.

24 **A.** Yes. I had responsibility for Boston, Massachusetts;
25 Buffalo, New York; New Castle, Pennsylvania; Rocky Hill,

1 Connecticut; Delran, New Jersey; and Landover, Maryland.

2 **Q.** And at some point did you also take over being Director
3 of Regulatory for Methuen?

4 **A.** Yes. That would be Boston.

5 **Q.** Oh, that's the Boston?

6 **A.** Yeah, in Massachusetts.

7 **Q.** Okay. Thank you.

8 **A.** Sure.

9 **Q.** So the Court understands, explain how the distribution
10 center system works and what your duties are as Director of
11 Regulatory Affairs over those.

12 **A.** Yes. I would have, as Director of Regulatory Affairs,
13 responsibility to monitor the daily purchases of controlled
14 substances by the customers that were serviced out of those
15 distribution centers.

16 **Q.** And did Landover distribution center, as well as New
17 Castle distribution center for McKesson, service portions of
18 West Virginia?

19 **A.** I believe I had Landover servicing the eastern
20 panhandle, yes. I don't recall if New Castle went down into
21 West Virginia.

22 **Q.** Okay. Are you still -- when did you stop with Landover
23 and New Castle?

24 **A.** Landover and New Castle would have gone over to another
25 Director, Joe Lumpkin, in I believe 2012-2013 time period.

1 **Q.** I'm going to hand you what's been marked for
2 identification as P-13736A.

3 MR. RAFFERTY: May I approach the witness, Your
4 Honor?

5 THE COURT: Yes.

6 THE WITNESS: Thank you.

7 BY MR. RAFFERTY:

8 **Q.** And I really want to talk to you for just a second
9 about what -- just the map so we can make sure that we
10 know which distribution centers were serviced in West
11 Virginia. Okay, sir?

12 Is this an email from Tom MacDonald to several people
13 and in a group called PGRDRC?

14 **A.** Yes, it is.

15 **Q.** Okay. What is PGRDRC, sir?

16 **A.** Pharmacy Group Regulatory, Department of Regulatory
17 Compliance.

18 **Q.** Okay. And you're a part of that list group; correct?

19 **A.** Yes.

20 **Q.** Okay. So this would have went to you on January 4th
21 2008, sir?

22 **A.** Yes, I would have been copied.

23 **Q.** Okay.

24 MR. RAFFERTY: Your Honor, we would move to admit
25 Document 311 -- sorry -- P-13736A.

1 THE COURT: Any objection?

2 MR. SCHMIDT: No objection, Your Honor.

3 THE COURT: It's admitted.

4 BY MR. RAFFERTY:

5 Q. If we can pull it up on the screen and go to Page
6 11. That's the map of the United States. Do you see
7 that, Mr. Oriente?

8 A. Yes, I can.

9 Q. And I'm going to apologize. It's a little hard -- it's
10 a little hard to make out because you've got the dotted
11 lines that are the state borders. Do you see that?

12 A. Yes, I do.

13 Q. Okay.

14 MR. RAFFERTY: I'm sorry, Your Honor. May I
15 approach the screen?

16 THE COURT: Yes.

17 BY MR. RAFFERTY:

18 Q. So you've got Washington Court House which serviced
19 West Virginia and included Cabell County; correct?

20 A. Yes, Washington Court House.

21 Q. And then you've also got New Castle. And you see New
22 Castle is also in that portion of West Virginia. Do you see
23 that?

24 A. Yes, I do.

25 Q. And then Landover, a portion of West Virginia. Do you

1 see that?

2 **A.** Yes, I do.

3 **Q.** So fair to say that you would have been the Director of
4 Regulatory Affairs over two of the three service centers --
5 or, I'm sorry -- distribution centers that serviced West
6 Virginia. True?

7 MR. SCHMIDT: Objection, vague as to time.

8 MR. RAFFERTY: Well, in two thousand --

9 THE COURT: Just a minute.

10 MR. RAFFERTY: I'm sorry, Your Honor.

11 THE COURT: I'll sustain the objection.

12 BY MR. RAFFERTY:

13 **Q.** I'm sorry, Mr. Oriente. When you took over in
14 2008 -- or, I'm sorry -- when you were moved to becoming
15 Director of Regulatory Affairs in 2008, were you
16 servicing two of the three distribution centers that
17 serviced West Virginia?

18 **A.** Yes, in the northern part and the eastern panhandle.

19 **Q.** Okay. Thank you, sir. You can set that aside now.

20 Now, did your position change in 2014, sir?

21 **A.** Yes, it did.

22 **Q.** Okay. And how did it change?

23 **A.** In 2014 I went from having the regional responsibility
24 to moving into what McKesson called its retail national
25 account, known as RNA. And, so, my responsibility changed

1 to overseeing the purchases made by the national chains.

2 **Q.** Okay. Fair to say that there are two types of
3 customers, or pharmacy customers that McKesson services:
4 Retail nationals accounts and then ISMCs? Is that correct?

5 **A.** Yes, that is correct.

6 **Q.** Okay. So the retail national accounts, those are the
7 big chains; is that right?

8 **A.** Yes, it is.

9 **Q.** Okay. Including Rite-Aid?

10 **A.** Yes, it would.

11 **Q.** And, in fact, in your position even going all the way
12 back to 2008, you were the Director of Regulatory Affairs
13 over the Rite-Aid account; correct?

14 **A.** Yes. Specifically from 2008 to 2014 I had the
15 responsibility for the Rite-Aid account.

16 **Q.** Okay. And then you went to retail national accounts
17 and you still had responsibility from '14 forward in your
18 role as retail account director; correct?

19 **A.** The way it worked, once the retail national account
20 regulatory group was established, it was spread out across
21 multiple people. So I didn't have sole responsibility for
22 it but I had some, yes.

23 **Q.** Okay. Yeah. Because as I understand it, and correct
24 me if I'm wrong, in 2014 instead of your retail national
25 accounts being held -- being serviced specifically by the

1 distribution center managers, or it was serviced -- I'm
2 going to get this question out. In two thousand -- up until
3 2014, the Directors of Regulatory Affairs over the
4 distribution centers also handled the retail national
5 accounts in the area; correct?

6 **A.** They would have had specific retail national accounts
7 assigned to them, yes.

8 **Q.** Okay. Thank you. And those retail national accounts,
9 those would be McKesson's biggest accounts; correct?

10 **A.** They would be largest in volume, yes.

11 **Q.** Okay. In fact, Rite-Aid, I believe, has approximately
12 4,600 stores nationwide that McKesson serviced; is that
13 accurate?

14 **A.** At what time?

15 **Q.** Let's take 2008 when you were servicing them.

16 **A.** Yes.

17 **Q.** Okay. And I want to talk for a few minutes about the
18 role of the Director of Regulatory Affairs, and I want to
19 focus on the time period between 2008 and 2014. Okay?

20 **A.** Yes.

21 **Q.** Make sure we have a time period. And during that time,
22 is it fair to say as Director of Regulatory Affairs, you
23 were responsible for implementing the Controlled Substance
24 Monitoring Program as a means to prevent diversion into the
25 illicit market for those distribution centers you were in

1 charge of?

2 **A.** Yes.

3 **Q.** Is it fair to say from 2008 to 2014 you were
4 responsible for ensuring compliance by McKesson for those
5 distribution centers for the -- I'm sorry. Let me strike
6 that.

7 From 2008 to 2014 is it fair to say you were
8 responsible for ensuring compliance with the requirements of
9 the Controlled Substances Act for all controlled substance
10 shipments that came out of the distribution centers you were
11 responsible for?

12 **A.** Yes.

13 **Q.** Okay. And from 2014 to present, you have been
14 responsible for ensuring compliance with the requirements of
15 the Controlled Substances Act for controlled substance
16 shipments going to McKesson's retail national accounts that
17 you were assigned to?

18 **A.** Yes, that is correct.

19 **Q.** And when you started as Director of Retail -- I'm
20 sorry -- Director of Regulatory Affairs, had you had any
21 experience as, in Regulatory Affairs?

22 **A.** There would have been some experience from being a
23 Director of Operations. That, that responsibility partially
24 is under the Director of Operations over distribution
25 centers. They need to understand what it is that they're

1 distributing, so, yes.

2 **Q.** Okay. But as a Director of Operations of a
3 distribution center, you have very different
4 responsibilities than a Director of Regulatory Affairs;
5 correct?

6 **A.** They would be different. Part of the Director of
7 Operations responsibility also covered knowing the
8 regulations for shipping controlled substances.

9 **Q.** Okay. And, so, since 2004, then, when you started with
10 McKesson, am I correct in assuming, then, that you were
11 familiar with the requirements under the Controlled
12 Substances Act and the corresponding regulations?

13 **A.** Yes.

14 **Q.** Okay. And when you became a specific -- you were
15 specifically transferred or moved into a Director of
16 Regulatory Affairs position, did you take it upon yourself
17 to then try to educate yourself further on those
18 requirements?

19 **A.** Yes. I did some self-education as well as received
20 training.

21 **Q.** Okay. And what type of -- when you say received
22 training, that would have all been, for lack of a better
23 phrase, on-the-job training?

24 **A.** No. There was some formalized training given by the
25 Senior Director, Gary Hilliard.

1 Q. Okay, Gary Hilliard. Who is Gary Hilliard?

2 A. He was a Senior Regulatory Director. He was pre-2008
3 when CSMP first came in. He was a Director for McKesson.

4 Q. And you had testified earlier that there were a total
5 of five DRAs when you started in 2008?

6 A. Yes.

7 Q. Okay. And those five, how long were there just five
8 DRAs for McKesson nationwide? Did it ever grow?

9 A. Yes, it did.

10 Q. Okay. How long do you recall, if you can, how long did
11 it remain just the five of you?

12 A. Up until 2012, I believe, when two additional were
13 added.

14 Q. And as part of your job responsibilities and in
15 implementing the policies and procedures of McKesson, you
16 would communicate pretty regularly with the other four DRAs.
17 Is that fair?

18 A. Yes, that is correct.

19 Q. Okay. Both by email, by phone, meetings, that type of
20 thing?

21 A. Yes, all of the above.

22 Q. Okay. I want to talk for just a minute -- shifting
23 gears now, I want to talk about some of the SOMS policies
24 that were in effect at McKesson, the Suspicious Order
25 Monitoring Systems. Okay?

1 **A.** Yes.

2 **Q.** Okay. If we could, can you pull up the screen for a
3 second?

4 I'm going to have a little timeline up here. I want to
5 make sure that we're oriented as to what time period I'm
6 talking about so that the Court knows specifically when I
7 ask you a question where we're at. Okay?

8 **A.** Yes.

9 **Q.** Okay. So, first, when you started in late 2007 as a
10 DRA -- and I hope I can just say DRA instead of Director of
11 Regulatory Affairs. You know what I'm referring to;
12 correct?

13 **A.** I do.

14 **Q.** When you started as a DRA in late 2007, the system that
15 was in place was called the Life-Style Drug Management -- or
16 Monitoring Program; correct?

17 **A.** The -- no, that, that program was in existence prior to
18 me becoming a Director of Regulatory Affairs.

19 **Q.** Yes, sir. I'm sorry. I guess what I was saying is
20 when you came there, that's the program -- or that's the,
21 the program that was in place at McKesson was the LDMP?

22 **A.** Yes. For a short time, that was as the CSMP,
23 Controlled Substance Monitoring Program, was being
24 developed.

25 **Q.** And before the LDMP, what there was was there was the

1 Section 55 of the operations manual of, of McKesson. Are
2 you familiar with that?

3 **A.** Yes, I am.

4 **Q.** Okay. But that had already been replaced with the LDMP
5 by the time you started. Is that fair?

6 **A.** No. The Section 55 ran concurrent with the LDMP
7 program.

8 **Q.** Okay. And let's just kind of orient ourselves here.
9 So up until --

10 MR. RAFFERTY: May I approach the screen, Your
11 Honor?

12 THE COURT: Yes.

13 MR. RAFFERTY: Do you want me to ask permission
14 every time?

15 THE COURT: No, you don't have to, Mr. Rafferty.

16 MR. RAFFERTY: Okay. Thank you, sir.

17 BY MR. RAFFERTY:

18 **Q.** Okay. So if we start with -- the Section 55 went
19 right up until -- and it looks like it overlaps the LDMP
20 a little bit. Is that accurate?

21 **A.** Yes.

22 MR. SCHMIDT: Your Honor, I think it actually
23 directly contradicts what he just said about just on the
24 back end of how long it went.

25 MR. RAFFERTY: Well, those --

1 THE COURT: Well, just a minute.

2 (Pause)

3 THE COURT: Well, answer the question if you can,
4 Mr. Oriente.

5 THE WITNESS: Could you repeat the question?

6 BY MR. RAFFERTY:

7 Q. Yeah. All I'm trying to do is orient us time-wise.
8 The Section 55 right here pre-dated the LDMP. And I
9 think you said it overlapped going into 2007? Is that
10 accurate?

11 A. Section 55 went until -- no, I believe Section 55, I
12 believe, went until 2009.

13 Q. Okay. So it's your understanding that the Section 55
14 which also entailed having excessive reports, excessive
15 order reports generated. Do you recall that?

16 A. Yes, I believe that was in Section 55.

17 Q. Okay. And then the LDMP when it came into existence
18 actually had a threshold system in place for controlled
19 substances; is that correct?

20 A. There were thresholds set under the LDMP program.
21 There were limits that if a customer ordered more than that,
22 it would show up on the LDMP report.

23 Q. Okay. So the LDMP applied to a monthly threshold of
24 8,000 dosage units per month for both hydrocodone and
25 oxycodone; is that correct?

1 **A.** We didn't refer to it as a threshold at that time under
2 the LDMP program. It was a limit. Thresholds were
3 established under the CSMP program.

4 **Q.** Okay. If I could, I would like to show you what's been
5 marked for purposes of identification as P-42535, sir.

6 MR. RAFFERTY: May I approach, Your Honor?

7 THE COURT: Yes.

8 THE WITNESS: Thank you.

9 BY MR. RAFFERTY:

10 **Q.** Thank you. Sir, is this a copy of the McKesson
11 operations manual for the Life-Style Drug Monitoring
12 Program?

13 **A.** Yes, it is.

14 **Q.** And if you look down in the bottom corner, it says it's
15 dated May 16th, 2007. True?

16 **A.** Yes.

17 **Q.** And, so, consistent with what you've said earlier, if
18 you started in late 2007, this would have been the program
19 that was in place -- or this would have been the -- a
20 program that was in place at McKesson?

21 **A.** I'm sorry. What -- can you rephrase the question?

22 **Q.** Yeah, yeah. I'm sorry. You said that you started as
23 Director of Regulatory Affairs in late 2007?

24 **A.** Correct.

25 **Q.** Okay. And I'm just directing you now to the bottom

1 right corner for the date that says May 16th, 2007.

2 **A.** Yes.

3 **Q.** Okay. So we take those two dates, this would have been
4 in place when you started as Director of Regulatory Affairs?

5 **A.** Yes.

6 **Q.** And if we look down at the --

7 MR. RAFFERTY: Oh, well, I'll move in Exhibit
8 P-42535, Your Honor.

9 MR. SCHMIDT: No objection, Your Honor.

10 THE COURT: It's admitted.

11 BY MR. RAFFERTY:

12 **Q.** And if we look at the top, and it's -- it says
13 Life-Style Drug Monitoring Program at the top.

14 And then if you look down at the middle portion, it
15 talks about the reporting process is targeting controlled
16 substances. Do you see that?

17 **A.** Yes, I do.

18 **Q.** Okay. "This reporting process is targeting controlled
19 substances that the DEA considers life-style drugs. These
20 drugs are highly abused and are commonly found in illegal
21 internet pharmacies."

22 Do you agree with that, sir?

23 **A.** That's what's written here identifying them as being
24 found in internet pharmacies, yes.

25 **Q.** Okay. And that they are highly abused?

1 **A.** That's what is written here, yes.

2 **Q.** Do you have any reason to disagree with that, sir?

3 **A.** No.

4 **Q.** Okay. And then it goes down and says, "Currently the
5 controlled substances being monitored by these reports are,"
6 and it has oxycodone and it's kind of a little crooked, but
7 the next column is base code. Do you see that?

8 **A.** Yes.

9 **Q.** Are you familiar with the usage of base codes at
10 McKesson.

11 **A.** Yes, I am.

12 **Q.** And is that -- is 9143 the oxycodone base code?

13 **A.** Yes, that would be the identification by the DEA of the
14 active ingredient in oxycodone.

15 **Q.** Okay. And then it says dosage threshold; right?

16 **A.** Yes, sir.

17 **Q.** Okay. So, in fact, it was referred to as a threshold;
18 true?

19 **A.** Okay, yes.

20 **Q.** Okay. And then hydrocodone and a base code 9193. To
21 your understanding, is 9193 the base code for hydrocodone?

22 **A.** Yes, it is.

23 **Q.** Okay. And the dosage threshold would be 8,000 for that
24 as well?

25 **A.** Yes.

1 Q. Okay. And then the same for the other two drugs after.
2 Do you see that?

3 A. Yes.

4 Q. And are those -- are those the base codes for those two
5 controlled substances?

6 A. Yes, they are.

7 Q. Okay. Now, the LDMP, when it was in place, did not
8 have an automatic blocking or stopping mechanism if someone
9 exceeded that threshold. Is that accurate?

10 A. That is correct. It would have been a manual process.

11 Q. Okay. So somebody from McKesson such as yourself as
12 Director of Regulatory Affairs would have to go in and block
13 the order manually?

14 A. When the LDMP program started, it was the
15 responsibility of either the distribution center manager or,
16 in my case, the Director of Operations that oversaw that
17 program, and we performed that function that you mentioned.

18 Q. Okay. And the Director of Regulatory Affairs would
19 play a role in that decision though. True?

20 A. Yes.

21 Q. Okay. Now I want to talk about --

22 If we could, let's go back to the timeline, please.

23 All right. As Mr. Schmidt pointed out, this might be
24 over -- but just for illustration purposes, the LDMP would
25 have been about a year I think you said?

1 MR. SCHMIDT: Your Honor, we'll object to the
2 demonstrative because I think it's now inconsistent with the
3 witness's testimony in terms of him saying the Section 55
4 program went right through the same period as the LDMP.

5 MR. RAFFERTY: How about that?

6 MR. SCHMIDT: Thank you. Okay.

7 MR. RAFFERTY: I fixed it. I just took the
8 Section 55 off.

9 THE COURT: Does that take care of your objection?

10 MR. SCHMIDT: I think that does as to what's
11 presently on the screen.

12 Thank you, Mr. Rafferty.

13 MR. RAFFERTY: Okay.

14 BY MR. RAFFERTY:

15 Q. So there's the LDMP in that general time period.
16 And then it switches to the CSMP. Is that correct, Mr.
17 Oriente?

18 A. CSMP would have been before 2009?

19 Q. Yeah. It started in about mid 2008, which is what we
20 tried to show here.

21 A. Okay, yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. Okay, all right. And when we go -- and the CSMP stands
25 for the Controlled Substance Monitoring Program. True?

1 **A.** Yes, it does.

2 **Q.** Okay. And going forward in our examination today I'm
3 going to focus primarily on this time period of the CSMP and
4 your involvement in that. Okay?

5 **A.** Yes.

6 **Q.** Okay. You mentioned Gary Hilliard earlier. True?

7 **A.** Yes, I did.

8 **Q.** Okay. And his role, he's going to be testifying in
9 this court by way of deposition testimony. So I'm not, I'm
10 not going to -- he covers these other two sections, so I'm
11 not going to cover those with you. Okay?

12 **A.** That's fine.

13 **Q.** Okay. So focusing on this time period, we'll go
14 forward.

15 Now, there's also a threshold system created for all
16 Schedule II and III controlled substances under the
17 Controlled Substance Monitoring Program. True?

18 **A.** As well as Schedule IVs and Vs.

19 **Q.** Okay. And I'm just concentrating on the IIs and IIIs
20 right now, but thank you. I appreciate that.

21 And, so -- well, they apply to all opioid products.
22 True?

23 **A.** Yes, they -- yes, it would.

24 **Q.** Okay. And they're set by base code. We just talked
25 about the base code. So if we look at 9143 base code for

1 oxycodone, the threshold would be set for a customer based
2 upon that base code. Is that true?

3 **A.** Yes, it would encompass all strengths under that base
4 code.

5 **Q.** Okay. Same for hydrocodone. True?

6 **A.** Yes, sir.

7 **Q.** Okay. And the threshold -- so when a threshold is
8 set -- and we'll talk about that in a little bit -- but if
9 the threshold is set and a customer exceeds that threshold
10 in a month -- so they're set month by month. True?

11 **A.** They are set -- initially at the start of the program
12 they were fixed thresholds and a customer could not exceed
13 it, that threshold. They would only be permitted to
14 received up to that threshold. Any order above that
15 threshold would be blocked, so you couldn't exceed your
16 threshold.

17 **Q.** Okay. Unless there was a -- what was referred to as a
18 three-level review process; correct?

19 **A.** This is correct.

20 **Q.** Okay. So there would be a Level One review which
21 involved a questionnaire. True?

22 **A.** There was a, a questionnaire. I just want to define --
23 there's a customer questionnaire and then there would be a
24 Level One specific questionnaire to ask why the customer had
25 a blocked order.

1 Q. Yeah. And that's the one I'm focusing on right now.

2 A. Okay.

3 Q. And that would be filled out generally by the sales
4 representative. Is that true?

5 MR. SCHMIDT: Your Honor, I don't mean to
6 interrupt. It would be helpful if we just had a time frame
7 because the program has evolved up to the present day.

8 THE COURT: If you could put a time frame on it.

9 MR. RAFFERTY: Absolutely, Your Honor.

10 BY MR. RAFFERTY:

11 Q. Starting in 2008 -- let's just take 2008 when you
12 started. The threshold would be set. And then if a
13 customer exceeded that threshold, then that would
14 trigger the three-level review. Is that correct?

15 A. If they attempted to exceed it, yes.

16 Q. Right. Okay. And the Level One involved that
17 questionnaire we were just talking about. True?

18 A. Yes, there was Level One questionnaire that would be
19 the first review as to why that customer had a blocked
20 order.

21 Q. And that would be generally filled out by the sales
22 rep. Is that true?

23 A. No. The sales rep did not do the Level One review. It
24 was conducted by someone at the distribution center.

25 Q. Okay. Are you familiar or aware of any time a sales

1 rep completed the Level One questionnaire in regards to a
2 possible excess of their threshold?

3 **A.** I'm not aware that Level Ones were completed by sales
4 reps in my region, no.

5 **Q.** Okay. And then it would progress after that. If it
6 was not satisfactory, then it would go to Level Two.
7 Correct?

8 **A.** Yes, that is correct.

9 **Q.** Okay. And then if it wasn't satisfied after Level Two,
10 then it went to a Level Three review; correct?

11 **A.** Yes, that is correct.

12 **Q.** Okay. And in 2013 did the CSMP change in regards to
13 the Level One through Three process?

14 **A.** Yes, it did.

15 **Q.** Okay. And, in fact, the Level One through Three
16 process was replaced with a system where a customer's order
17 was reported to the DEA as suspicious any time the customer
18 exceeded the threshold for a given base code. True?

19 **A.** Yes, that is correct. We reported more.

20 **Q.** But prior to that it did not unless it reached a Level
21 Three?

22 **A.** Correct. The Level Three would be the, the
23 identification to report.

24 **Q.** And the CSMP, sir, this was a national policy of
25 McKesson's; correct?

1 **A.** Yes, it was.

2 **Q.** There weren't different CSMPs for different
3 distribution centers?

4 **A.** No, there was one operating manual.

5 **Q.** Right. And everybody -- each of the DRAs were expected
6 to abide by the rules pertaining to the CSMP. True?

7 **A.** Yes, we followed the same operating manual.

8 **Q.** And as Director of Regulatory Affairs, you were
9 expected to have -- be very intimately familiar with the
10 requirements of the CSMP. Is that fair?

11 **A.** Yes.

12 **Q.** And to follow that?

13 **A.** Yes.

14 **Q.** And one of the key things in the CSMP -- one of the big
15 issues that McKesson had in their CSMP was the need for
16 proper and quality documentation. Is that correct?

17 **A.** Yes, documentation was part of the program.

18 **Q.** And you would agree with me -- we talked about the --
19 being familiar with the requirements of the Controlled
20 Substances Act. Do you recall that?

21 **A.** I'm sorry. What was the last part?

22 **Q.** You testified earlier about your knowledge of the
23 Controlled Substances Act.

24 **A.** Yes.

25 **Q.** Okay. You agree that under the Controlled Substances

1 Act, McKesson had a duty to provide suspicious order reports
2 to the DEA. True?

3 **A.** Yes.

4 **Q.** Okay. And you'll agree when McKesson launched the CSMP
5 in 2008, it did so understanding that the DEA expected
6 McKesson to block any orders it deemed suspicious; correct?

7 **A.** The requirement, as I understood it, was to report
8 suspicious orders, at which we started the blocking and
9 those orders would be reported after a Level Three was
10 conducted.

11 **Q.** Okay. And let me, let me try to restate my question a
12 little bit.

13 You understood in 2008 when the CSMP was launched that
14 the DEA expected McKesson to block orders that it deemed
15 suspicious; correct?

16 **A.** Yes.

17 **Q.** And now I'd like to show you what's been marked as
18 P-42638, sir.

19 MR. RAFFERTY: May I approach, Your Honor?

20 THE COURT: Yes.

21 BY MR. RAFFERTY:

22 **Q.** Do you recognize this document as the Controlled
23 Substance Monitoring Program at McKesson Corporation?

24 **A.** Yes.

25 **Q.** Okay. And if you look at the page all the way in the

1 back -- if you look in the upper right corner, this will be
2 similar to a lot of documents. In the upper right-hand
3 corner there's a dot, dot 17-A in the upper -- that is the
4 last --

5 **A.** The upper right corner is blank.

6 **Q.** Oh, okay. Well, I might have given you the wrong -- I
7 had it marked up that way. So if you go to just the last
8 page, it's the last page of the document.

9 **A.** Okay.

10 **Q.** Page 17 I believe.

11 **A.** Yes, sir. That's Page 17.

12 **Q.** And if you look down, it says -- it's got a date,
13 revision number. It says 1.4. It's got June 16th, 2008.
14 Do you see that?

15 **A.** Yes.

16 MR. RAFFERTY: Your Honor, at this time plaintiffs
17 would move in P-42368.

18 MR. SCHMIDT: No objection.

19 THE COURT: It's admitted.

20 And I need to interrupt you, Mr. Rafferty. We have too
21 many trials going on and not enough court reporters. So
22 we're going to have to make a change here. We'll be in
23 recess for about 10 minutes.

24 MR. RAFFERTY: Okay. Thank you, Your Honor.

25 THE COURT: I'm sorry.

1 MR. RAFFERTY: No problem.

2 (Recess taken at 10:49 a.m.)

3 MR. SCHMIDT: May the witness resume the witness stand,
4 Your Honor?

5 THE COURT: Yes. Mr. Oriente, you may resume the
6 witness stand.

7 MR. RAFFERTY: Still have a couple of questions.

8 THE WITNESS: Do you want me to take this off?

9 THE COURT: It helps me to understand you, Mr.
10 Oriente.

11 THE WITNESS: Absolutely. I feel better without
12 it.

13 THE COURT: Don't we all.

14 BY MR. RAFFERTY:

15 Q. Okay, Mr. Oriente, I think where we left off, we were
16 talking about some responsibilities and duties under the
17 Controlled Substances Act. I want to go back for just a
18 moment to the CSMP that we just admitted into evidence,
19 42638. Do you have that in front of you, sir?

20 A. I do.

21 Q. Okay. At the top, it says Controlled Substance
22 Monitoring Program and then it goes down and it says
23 purpose. Do you see that section, sir?

24 A. Yes.

25 Q. Okay. It says proactively review the customers' orders

1 and purchases for all controlled substances in order to
2 detect and prevent diversion. Would you agree that that's
3 the purpose of the CSMP that was put in place in 2008 by
4 McKesson?

5 **A.** Yes, sir, it was.

6 **Q.** Okay. Second, maintain customer thresholds for all
7 customer -- for all controlled substances. Do you see that?

8 **A.** Yes, we did that.

9 **Q.** Okay. And the thresholds, we'll get into how the
10 thresholds were set in just a few minutes but, once again,
11 that's the monthly max that a customer would order without
12 triggering a review, correct?

13 **A.** Yes. In the level one, yes.

14 **Q.** Yes, sir. And then it says make informed decisions
15 based upon established threshold information. Do you see
16 that?

17 **A.** Yes.

18 **Q.** Okay. And that's important, is to get the information
19 so that you can make an informed decision as to whether or
20 not to allow a customer to exceed that threshold; true?

21 **A.** It would have been to determine if a threshold was
22 going to be adjusted upward, yes.

23 **Q.** Okay. And then it says build a documented business
24 case. Do you see that?

25 **A.** Yes.

1 **Q.** And it says to substantiate the volume of controlled
2 substances purchased by McKesson customers. And there's the
3 document again. Once again, McKesson -- the documentation
4 was a very important part of the process, the CSMP process;
5 true?

6 **A.** Yes. It was part of it.

7 **Q.** Okay. And then it says report to the DEA those
8 orders/purchases/customers designated as suspicious. Do you
9 see that?

10 **A.** Yes, I do.

11 **Q.** And that's the reporting obligation that we talked
12 about under the CSA, correct?

13 **A.** Yes, that's correct.

14 **Q.** And then if you got to Page 6, it's -- there's a number
15 two threshold review. And I'll go very quickly through
16 this, Mr. Oriente, because the Court will have the benefit
17 of this, but I just want to make sure that I'm reading this
18 correctly. It says down 2.2 threshold excursion. Do you
19 see that?

20 **A.** Yes, I do.

21 **Q.** Once a customer has reached their monthly maximum
22 threshold amount, all subsequent orders for that item will
23 be blocked. Do you see that?

24 **A.** Yes, I do.

25 **Q.** Okay. And that's the blocking requirement we talked

1 about over the -- under the regulations, correct?

2 **A.** Yes. And orders would be blocked once they reach their
3 threshold.

4 **Q.** This triggers the level -- the level review process as
5 detailed in level review steps below. Do you see that?

6 **A.** Yes, I do.

7 **Q.** Okay. So, you agree that McKesson had an obligation to
8 monitor for suspicious orders, block suspicious orders, and
9 report suspicious orders; true?

10 **A.** Yes, we did.

11 **Q.** Okay. Thank you, sir.

12 MS. HARDIN: Your Honor, I'm just going to object.
13 Ashley Hardin for Cardinal. Lack of a time period as to
14 when that question is referring.

15 MR. SCHMIDT: I'll join in that objection.

16 THE COURT: Sustained. If you can put a specific
17 time period on it, Mr. Rafferty.

18 MR. RAFFERTY: Yes. Yes, sir. Yes, Your Honor.

19 BY MS. RAFFERTY:

20 **Q.** I'm talking about from 2008 forward when the CSMP was
21 in place.

22 MR. SCHMIDT: And I'll object just to the issue of
23 blocking and whether that's in the regulation is obviously a
24 contested legal issue. There was a motion practice on that
25 before trial where Your Honor was asked by the plaintiffs to

1 make a finding that that was a legal obligation and now
2 trying to get the witness to testify as to legal
3 obligations, as opposed to what he wanted the DEA to do, or
4 he understood he the DEA wanted him to do. I'm sorry.

5 MR. NICHOLAS: We join in that objection.

6 MS. HARDIN: Same, Your Honor.

7 MR. RAFFERTY: Your Honor, I think he testified
8 that that was his understanding earlier.

9 THE COURT: Well, I'm going to let you question
10 him along this line and this is a proper subject for cross
11 examination, I believe, and I'll let you go ahead, as long
12 as you've got a specific time frame down.

13 And your objections will be shown for the record.

14 MR. SCHMIDT: Thank you, Your Honor.

15 BY MR. RAFFERTY:

16 **Q.** And the time frame I was referring to, sir, was 2008
17 forward, you know, when the CSMP was put in place.

18 **A.** What was the original question?

19 **Q.** The obligation to monitor, report and block. I guess
20 it's really monitor, block and report.

21 **A.** Yes. With the guidance, change those requirements,
22 McKesson adopted.

23 THE COURT: He's asking the witness, if I
24 understand it correctly, the witness's understanding of what
25 these requirements were and since he was in a position of

1 authority and responsibility with the -- with McKesson, I
2 think it's proper to question him and I'll overrule the
3 objection.

4 Go ahead, Mr. Rafferty.

5 MR. RAFFERTY: Thank you. Thank you, Your Honor.

6 BY MR. RAFFERTY:

7 **Q.** Now moving forward, I'd like to show you what's been
8 marked as Plaintiffs' Exhibit 00034, sir.

9 MR. RAFFERTY: May I approach, Your Honor?

10 There you are, Mr. Oriente.

11 THE WITNESS: Thank you.

12 MR. RAFFERTY: Thank you.

13 BY MR. RAFFERTY:

14 **Q.** Is this a --

15 MR. RAFFERTY: I'm sorry, sir. I'll wait until
16 the Court has it.

17 May I proceed, Your Honor?

18 THE COURT: Yes.

19 BY MR. RAFFERTY:

20 **Q.** Is this a letter from the Drug Enforcement
21 Administration dated December 27th, 2007 to McKesson
22 Corporation?

23 **A.** Yes, it is.

24 MR. RAFFERTY: Plaintiffs would move in Exhibit
25 P-00034 here, Your Honor.

1 THE COURT: Any objection?

2 MR. SCHMIDT: Yes, Your Honor. We object to this
3 as hearsay and foundation with this witness having been
4 established.

5 MR. RAFFERTY: It's part of the stipulation, sir,
6 in terms of -- Your Honor, in terms of foundation and its
7 notice as to the obligation.

8 MR. SCHMIDT: There's no stipulation as to notice
9 and it's hearsay.

10 THE COURT: This came up earlier in connection
11 with one of the other defendants, I think. Did I let it in
12 or keep it out?

13 MR. SCHMIDT: Yes, sir. I think you let it in
14 earlier one, but not this one.

15 MR. RAFFERTY: Yes. This is a December 27, 2007
16 one, Your Honor, and yes, it was -- it is -- and I'm sorry
17 if I wasn't clear. I was -- in terms of foundation with
18 this witness, I was saying it's on the stipulation. In
19 terms of hearsay, it is notice as to the corporation as to
20 what the requirements and duties are according to the DEA.

21 MS. HARDIN: Your Honor, we object on behalf of
22 Cardinal. It's not notice to Cardinal of anything.

23 MS. MAINIGI: And, Your Honor, I --

24 THE COURT: Well, that's --

25 MS. MAINIGI: Your Honor --

1 THE COURT: Yes?

2 MS. MAINIGI: May I just add for the record, in
3 terms -- I think you're referring back to Mr. Monet. What I
4 recall happening during Mr. Monet's testimony is you
5 admitted the December 27th -- December, 2007 letter not for
6 the truth of the matter, but just as notice.

7 MR. SCHMIDT: I don't think he's yet established a
8 basis to admit this as to notice with McKesson with this
9 witness. If he does, then we won't object for that limited
10 purpose.

11 THE COURT: Well, I think Ms. Hardin is right.
12 It's only -- if it's admissible at all, it's only admissible
13 against McKesson, isn't it?

14 MR. RAFFERTY: Yes. That's all I'm offering it
15 for. I believe the other letters, the other Rannazzisi
16 letters for the other defendants, came in. That's all I'm
17 referring.

18 THE COURT: You can ask him if he's familiar with
19 it. The hearsay objection is well taken, but it could come
20 in for the limited purpose and I'm going to go ahead and let
21 you ask him the questions.

22 MR. RAFFERTY: Thank you, Your Honor. And that's
23 all I'm offering for is notice, limited purpose for notice,
24 and it is, once again, it's on the stip in terms of the
25 sponsoring witness, Your Honor, but I'll -- I'll continue.

1 THE COURT: Please do.

2 BY MR. RAFFERTY:

3 Q. Do you see -- have you seen this letter before, Mr.
4 Oriente?

5 A. Yes, I have.

6 Q. Okay. And is this one of the letters that you would
7 have reviewed when you were in your role as Director of
8 Regulatory Affairs during this time period?

9 A. I believe I received this letter when I was Director of
10 Operations still.

11 Q. Okay. So, performing your duties for McKesson Corp.,
12 correct?

13 A. Yes. As a registrant, I would have received a copy of
14 this.

15 MR. RAFFERTY: I would offer it now, Your Honor.

16 THE COURT: I'm going to admit it for the limited
17 purpose against McKesson only.

18 MR. SCHMIDT: We don't object to that with that
19 foundation being laid, Your Honor.

20 THE COURT: All right. Your objection will be
21 shown for the record.

22 MR. RAFFERTY: And that does away with the
23 document.

24 THE COURT: And you said you don't object with the
25 foundation being laid, is that right, for limited purposes?

1 Okay.

2 BY MR. RAFFERTY:

3 Q. If we could, let's take a look at this particular
4 letter. If we could pull it up on the screen. And it says,
5 Dear Registrant, and then it goes down and says this letter
6 is being sent to every entity in the United States
7 registered with the Drug Enforcement Administration to
8 manufacture or distribute controlled substances. And then
9 it says the purpose of this letter is to reiterate. Do you
10 see that word, sir?

11 A. Yes, I do.

12 Q. Reiterate the responsibilities of controlled substance
13 manufacturers and distributors to inform DEA of suspicious
14 orders in accordance with 21 CFR 1301.74(b).

15 Now, the question I have for you is, when you saw that
16 letter and you saw the word reiterate, had you -- did you go
17 back and look for other letters that the DEA had sent?

18 A. I personally did not.

19 Q. Had you seen the other letters that the DEA and Mr.
20 Rannazzisi had sent?

21 A. I believe I did, yes.

22 Q. Okay. And what he's reiterating here, if we go down,
23 it says the registration -- I'm sorry. Strike that. It
24 says the regulation in that third full paragraph, sir, the
25 regulation also requires that the registrant inform the

1 local DEA Division Office of suspicious orders when
2 discovered by the registrant. Did I read that correctly,
3 sir?

4 **A.** Yes, you did.

5 **Q.** And is that your understanding of what the obligation
6 of McKesson was under the Controlled Substances Act, was to
7 submit the suspicious order when discovered?

8 MR. SCHMIDT: Same objection, Your Honor.

9 BY MR. RAFFERTY:

10 **Q.** A later date --

11 MR. SCHMIDT: I think it's okay if he wants him to
12 understand, at this point in time, did he have this
13 understanding, but to ask him to state the law, I think, is
14 improper.

15 THE COURT: Well, I'll sustain that objection, Mr.
16 Rafferty, and you can move on.

17 MR. RAFFERTY: Thank you, Your Honor.

18 BY MR. RAFFERTY:

19 **Q.** When you reviewed this, do you understand that the DEA
20 -- well, strike that. Do you understand that suspicious
21 orders, according to what your understanding was at the time
22 were to be disclosed, when the suspicious order was
23 disclosed as compared to a later date?

24 MR. SCHMIDT: Objection, vague.

25 THE COURT: Sustained.

1 BY MR. RAFFERTY:

2 Q. When discovered?

3 MR. RAFFERTY: Okay, I'm sorry. All right. Let's
4 just go on.

5 BY MR. RAFFERTY:

6 Q. The letter -- you received the letter and you read this
7 letter, correct, sir?

8 A. Not this particular example, no, but I received a
9 letter similar.

10 Q. A copy?

11 A. A different copy, yes.

12 Q. Okay. And if we keep going down, you'll also see it
13 says filing a monthly report of completed transactions,
14 e.g., an excessive purchase report, or high unit purchases
15 does not meet regulatory requirement to report suspicious
16 orders. Do you see that?

17 A. Just give me a minute to read that.

18 Q. Yeah. It's just the sentence right after.

19 A. Yes. That's what it stated here.

20 Q. Okay. And then the DEA goes on and says registrants
21 must conduct an independent analysis of suspicious orders
22 prior to completing a sale. Do you see that?

23 A. Yes, to determine if it's likely to be diverted.

24 Q. And that's what was supposed to happen through the CSMP
25 process, correct, that independent analysis?

1 **A.** The CSMP process was to identify suspicious orders.

2 **Q.** And to go through the level -- the three-level process,
3 correct?

4 **A.** Yes. Once identified as suspicious, it would go
5 through the three-level process.

6 **Q.** Right. And then it says -- the last sentence of that
7 report, reporting an order as suspicious will not absolve
8 the registrant of responsibility if the registrant knew, or
9 should have known, that the controlled substances were being
10 diverted. Do you see that?

11 **A.** Yes. If we identified an order as being diverted, we
12 would have blocked it. There's a difference between
13 diversion and suspicious orders.

14 **Q.** I'm sorry. Say that again, sir.

15 **A.** I said if we identified an order as potential
16 diversion, we would block that order, and that there's a
17 difference between a diverted order and a suspicious order.

18 **Q.** Right. Once you identified it, you had -- once you
19 identified it as suspicious, you had an obligation to report
20 it as such, correct?

21 MR. SCHMIDT: Object to characterization, Your
22 Honor. That's not what he testified to.

23 MR. RAFFERTY: Well, I -- he --

24 THE COURT: Wait a minute.

25 MR. SCHMIDT: Your Honor, I might have actually --

1 the question in my head, I think I mis-heard what he said.
2 I'll withdraw that.

3 THE COURT: All right. Go ahead.

4 BY MR. RAFFERTY:

5 Q. Once you -- once -- so, I mean -- see if I can re-state
6 it. Once you identified an order as suspicious, you then
7 have the obligation to report the order, correct?

8 A. Yes, report the suspicious order.

9 Q. Okay. One of the things that was referenced in the
10 CSMP was this policy of Know Your Customer. Are you
11 familiar with that policy?

12 A. Ys, I am.

13 Q. Okay. And, in fact, that was something that was -- was
14 in the CSMP, was the obligation for McKesson to know your
15 customer and, in fact, your customer's customer; true?

16 A. We -- would know our customer by doing due diligence
17 and then I know the phrase know your customer's customer did
18 come out during some time.

19 Q. Okay. I would like to show you now what is identified
20 as P-12814, sir.

21 MR. RAFFERTY: May I approach, Your Honor?

22 THE WITNESS: Thank you.

23 MR. RAFFERTY: May I proceed, Your Honor?

24 BY MR. RAFFERTY:

25 Q. This appears to be an e-mail from Donald Walker. Who

1 is Donald Walker?

2 **A.** Don Walker was the Senior Vice President over
3 Regulatory Affairs. He was my boss.

4 **Q.** Okay. And during what time period was he your boss?

5 **A.** He would have been my boss somewhere in 2008 while one
6 boss took ill. So, Don took over the team. So, from like
7 2008 through when Don left the company, and I'm not sure
8 exactly what year he left.

9 **Q.** Okay.

10 **A.** I'm sorry.

11 **Q.** And this is dated May 2nd, 2012. Do you see that?

12 **A.** Yes.

13 **Q.** So, this was approximately four years after the CSMP
14 was implemented by McKesson; is that true?

15 **A.** Yes.

16 **Q.** And in the to-line, it's got Dave Gustin, Tom McDonald,
17 Bill Mahoney, Michael Oriente. That's you, correct?

18 **A.** Yes.

19 **Q.** And others. Are those other Regulatory Affairs
20 personnel?

21 **A.** Yes, they all are.

22 **Q.** Okay. And the subject line is Know Your Customer. Do
23 you see that?

24 **A.** Yes, I do.

25 **Q.** And it says, on Monday, I will be making a presentation

1 to the ISMC sales force at NSC around Know Your Customer.
2 This is intended to be an awareness awakening session that
3 we as a regulatory team will follow up on during the
4 upcoming year. Do you see that?

5 **A.** Yes.

6 **Q.** Okay. And is that the type of thing that would
7 typically be sent to you by Mr. Walker or other Regulatory
8 Affairs people, PowerPoints and such, for presentations?

9 **A.** At different times, we would communicate, yes.

10 **Q.** Okay.

11 MR. RAFFERTY: At this time, Your Honor, we would
12 move in P-12814.

13 THE COURT: Any objection to that one?

14 MR. SCHMIDT: We don't object to the cover e-mail.
15 The PowerPoint with it seems to have at least some embedded
16 hearsay that I haven't had a chance to study. So, if we can
17 just preserve our ability to object to that.

18 MS. HARDIN: Your Honor, on behalf of Cardinal, we
19 object as to hearsay and note our exception as to Cardinal.

20 THE COURT: Mr. Nicholas?

21 MR. NICHOLAS: We join in the objection as stated
22 by Ms. Hardin.

23 THE COURT: Are you objecting to the whole thing,
24 Ms. Hardin, or just the PowerPoint presentation?

25 MS. HARDIN: The entire thing, Your Honor. It

1 appears to be an internal McKesson document that would not
2 be an admission by Cardinal, nor would it be notice to
3 Cardinal.

4 MR. SCHMIDT: Your Honor, I'm assuming -- there
5 have now been several objections on behalf of Cardinal only.
6 I'm assuming that documents that come into evidence as to
7 one party don't come in for notice as to another party. How
8 could they possibly do so?

9 Obviously, the Cardinal documents don't come in for
10 notice as to us, don't come in for notice as to ABDC. I am
11 fine if Cardinal wants to keep making those objections, but
12 I just want it clear that the same principle applies to
13 every single party. You can't use one party's documents as
14 notice against another.

15 THE COURT: I think that's right and I can make
16 that as a standing ruling for the whole shebang.

17 MR. SCHMIDT: Thank you, Your Honor.

18 MS. HARDIN: That's fine, Your Honor. Thank you.

19 MR. RAFFERTY: And we would -- and we agree, Your
20 Honor. We're just offering these against McKesson.

21 THE COURT: All right.

22 MR. ACKERMAN: With respect to the --

23 THE COURT: You've got a --

24 MR. ACKERMAN: I'm sorry, Your Honor. You were
25 looking down, so I wanted to make sure that you saw me.

1 THE COURT: Well, I will be happy to hear from
2 you, Mr. Ackerman.

3 MR. ACKERMAN: Sure. So, with respect to the
4 hearsay, Your Honor, let's look at 801(d), as in dog, 2(B),
5 as in boy, and d as in dog.

6 THE COURT: Run that by me again. 801(d) --

7 MR. ACKERMAN: We'll start with d, as in dog.

8 THE COURT: 801(d) (2) (D)?

9 MR. ACKERMAN: Correct, yes.

10 THE COURT: Was made by the party's agent or
11 employee on a matter within the scope of that relationship
12 and while it existed.

13 MR. ACKERMAN: So, the presentation was made by a
14 McKesson employee. To the extent Mr. Schmidt has referenced
15 embedded hearsay, I would refer the Court to 801(d) (2) (B),
16 as in boy, because McKesson has adopted those statements by
17 incorporating them into the presentation.

18 MR. SCHMIDT: And, Your Honor, it's not -- I don't
19 think it's a correct reading of the rule that anything
20 someone quotes, if they say, hey, I heard this on the
21 street, or I heard this in an article, or I heard this
22 wherever, that that becomes an adopted statement. That's
23 not the purpose of the rule to say that anything someone
24 repeats overcomes hearsay. Embedded hearsay always remains
25 an issue.

1 MR. ACKERMAN: Well, Your Honor, this is a
2 presentation that the cover e-mail states they are providing
3 to the sales force intended to be an awareness awakening
4 session. So, I think it's a little more than just merely an
5 employee repeating something. It was an employee
6 incorporating statements so in order to educate other
7 members of the ISMC sales force.

8 THE COURT: Do you want to say anything else, Mr.
9 Schmidt?

10 MR. SCHMIDT: I'm looking for the rule on embedded
11 hearsay, which I think is 805. 805 recognizes that hearsay
12 within hearsay remains an issue notwithstanding that the
13 overall document itself may not be hearsay. So, 805 trumps
14 the provision that Mr. Ackerman is citing.

15 MR. ACKERMAN: To be clear, Your Honor, there are
16 two exceptions to the two levels of hearsay. The first
17 would be 801(d)(2)(D), as in dog. It would be a statement
18 by an employee.

19 To the extent there is hearsay within hearsay, those
20 statements would not be hearsay pursuant to 801(d)(2)(B), as
21 in boy, because this employee and McKesson itself has
22 adopted the statement or manifested that they believed them
23 to be true.

24 THE COURT: All right. I'm going to admit it,
25 overrule the objection and admit it.

1 Go ahead, Mr. Rafferty.

2 MR. RAFFERTY: Thank you, Your Honor.

3 MR. RAFFERTY: Thank you, Mr. Ackerman.

4 MR. ACKERMAN: You're welcome.

5 BY MR. RAFFERTY:

6 **Q.** If we could, let's turn to Tab -- or let's actually
7 finish the cover letter. So, do you recall getting this
8 particular PowerPoint, sir, the Know Your Customer?

9 **A.** Yes. I remember receiving this e-mail.

10 **Q.** Okay. And did you ever have a conversation with Mr.
11 Walker about why it is four years after the CSMP is in place
12 there needs to be an awakening session? Did you ever have a
13 conversation with him about that?

14 **A.** Not specifically to that. This would have been
15 training and additional -- additional training given to the
16 sales team to give them the latest directions regarding
17 knowing your customer.

18 **Q.** Okay. And if we turn to Page 5, Mr. Oriente, sir,
19 please, it's got a description that says CDC currently
20 classifies prescription drug abuse as an epidemic. Do you
21 agree with that, sir, at that time period?

22 **A.** That's -- that's the way I understood the CDC is
23 classifying it, yes.

24 **Q.** And you understand there is an opioid epidemic in the
25 United States even today?

1 MR. SCHMIDT: Objection. Vague as to what he's
2 talking about. We were just asking about prescription drugs
3 as opposed to other forms of opioids.

4 THE COURT: Sustained.

5 BY MR. RAFFERTY:

6 Q. Do you agree that there's -- I wasn't trying to tie the
7 two together. Do you agree that there is an opioid epidemic
8 in America, setting aside the same document?

9 MR. SCHMIDT: I think that's the literal same
10 question that was just asked.

11 MR. RAFFERTY: I'm setting the document aside for
12 a second, Your Honor, and I'm just asking the question and
13 then I will get back to the document.

14 THE COURT: Well, you're talking about now?

15 MR. RAFFERTY: Yes.

16 MR. SCHMIDT: And our objection is the same. It's
17 vague as to what he's talking about, whether it's heroin or
18 prescription opioids.

19 MR. RAFFERTY: I'll rephrase it, Your Honor.

20 THE COURT: Okay.

21 BY MR. RAFFERTY:

22 Q. It goes on and says -- well, it says CDC currently
23 classifies prescription drug abuse as an epidemic. And this
24 is in 2012. Do you have an understanding as to whether
25 there is still a prescription drug abuse epidemic in the

1 United States?

2 **A.** The -- my understanding is that the prescription drug
3 abuse epidemic has declined significantly in the last few
4 years.

5 **Q.** So, you do not think that there is a prescription drug
6 epidemic in the United States today; is that your testimony,
7 sir?

8 **A.** Not as much as a few years ago, no. Today, it's
9 illicit Fentanyl and heroin.

10 **Q.** 27,000 died from prescription drug overdoses in 2007, a
11 five-fold increase since 1990. Do you see that?

12 **A.** Yes, in those time frames.

13 **Q.** Do you have any reason to disagree with that statement,
14 sir?

15 **A.** I do not.

16 **Q.** Okay. Now, if you'll turn to Page 13, sir.

17 **A.** (Witness complies).

18 **Q.** Are you there, sir?

19 **A.** Yes, I am.

20 **Q.** Okay. All right. Your Role in Knowing Your Customer.
21 Prospective customers understand pharmacy business models.
22 Do you see that?

23 **A.** Yes.

24 **Q.** And one of the things in understanding that first
25 bullet point underneath, percentage of business, scripts

1 filled, that are controlled substances. Do you see that?

2 **A.** Yes, I do.

3 **Q.** And then underneath it, it's got volume of critical
4 drugs and it lists out oxycodone and hydrocodone and
5 Alprazolam. And then -- do you see that?

6 **A.** Yes, I do.

7 **Q.** Okay. Percent cash sales for controlled drugs. Do you
8 see that?

9 **A.** Yes, I do.

10 **Q.** Are these somewhat what's referred to sometimes as red
11 flags to look for?

12 **A.** Yes, they would be.

13 **Q.** Okay. Pain clinics as a source of prescriptions, is
14 that -- would that be considered a red flag?

15 **A.** It could be, yes.

16 **Q.** Let's see. Out of area scripts -- average pharmacy
17 serves 5-7 mile radius. Do you see that?

18 **A.** Yes, I see that.

19 **Q.** And that would be a red flag, too, correct?

20 **A.** It would depend on the geographic area. More rural
21 areas would travel greater distances than in the city.

22 **Q.** But one of the things that McKesson wants to look for
23 in determining -- in understanding its customers' business
24 model would certainly be whether or not people are traveling
25 from out of the area to fill their prescriptions there,

1 correct?

2 **A.** Yes. They'd want to know that 5-7 miles is an average.

3 **Q.** Okay. And then, Observe, volume of controls relative
4 to demographics. Do you see that?

5 **A.** Yes, sir.

6 **Q.** So, that would be looking to see how many pills were
7 going into a particular pharmacy based upon the demographics
8 of that area, correct?

9 **A.** Yes, that is correct.

10 **Q.** And then, it says -- if you turn to the next page, sir,
11 under Current Customers, recognizing changes in pharmacy's
12 business. Regular increases in purchases of controlled
13 substances. Do you see that?

14 **A.** Yes, I could.

15 **Q.** So, if a pharmacy continually, you know, monthly or
16 every other month continues to go up in the number of
17 controlled substances it's filling in prescriptions, that
18 would be a potential red flag?

19 MR. SCHMIDT: Objection. Mischaracterizes the
20 document.

21 MR. RAFFERTY: I was asking what his understanding
22 was.

23 THE COURT: Overruled.

24 BY MR. RAFFERTY:

25 **Q.** Mr. Oriente?

1 **A.** I'm sorry. What was the question?

2 **Q.** Well, I don't want to speak for His Honor. I thought
3 he overruled.

4 THE COURT: Do you want to re-state the question?

5 MR. RAFFERTY: Yes, sir.

6 BY MR. RAFFERTY:

7 **Q.** So, if a pharmacy customer of McKesson's continues to
8 go up in volume of controlled substances on a regular basis,
9 that is a potential red flag to your understanding; is that
10 correct?

11 **A.** It could be one. As prescriptions increased being
12 written, and those prescriptions would go to a pharmacy, so
13 the pharmacy would be receiving additional prescriptions
14 written by a prescriber, their amount that they're
15 purchasing to meet those prescriptions could go up. So,
16 just regular increases, again, is not always a sign that
17 there's diversion.

18 **Q.** Okay. And if we look at Page 7, sir, of this
19 PowerPoint, the left box says -- I'm sorry. Are you there?

20 **A.** Not yet. Sorry.

21 **Q.** I'll try to wait for you --

22 **A.** Okay, I'm there.

23 **Q.** -- before the next question. It says, know your
24 customer and your customer's customer. That's what we were
25 talking about earlier, correct?

1 **A.** Yes.

2 **Q.** And your customer's customer would be, for example, the
3 doctors that are writing the prescriptions, correct?

4 **A.** Not necessarily. They're not the customer of the
5 pharmacy. They would be the prescriber. Customer of the
6 customer is the individual that's getting that prescription.

7 **Q.** Okay. But do you also want to know, for example, who
8 the doctors are that are prescribing the drugs that are
9 being filled at the pharmacy?

10 **A.** Yes. We would request prescriber information when
11 necessary.

12 **Q.** Okay. And then it goes on. And I'm not going to go
13 through this, but it basically goes on to say monitor, block
14 and report in the next three boxes; is that correct? And we
15 talked about that earlier.

16 **A.** Yes, sir.

17 **Q.** Okay. And then, finally on this document, if you would
18 turn to Page 6, it says, How the DEA Sees It. The illicit
19 pain clinics, the pharmacies that fill their scripts, and
20 the wholesale distributors -- and that would be McKesson,
21 correct, the wholesale distributors?

22 MR. SCHMIDT: And this is -- this is what we were
23 objecting to as embedded hearsay. This might be the same
24 language from the December letter that you just used. I
25 don't know if it is, but we would just ask that it only come

1 in for purposes of notice.

2 MR. RAFFERTY: Yes. That's all we're offering it
3 for, Your Honor.

4 THE COURT: All right. Well, I'll sustain the
5 objection and it comes in only for the limited purpose.

6 MR. RAFFERTY: Okay. Thank you, Your Honor.

7 BY MR. RAFFERTY:

8 Q. So, I'm sorry. I'm just going to start over just so I
9 orient myself. The illicit pain clinics, the pharmacies
10 that fill their scripts, and the wholesale distributors who
11 supply pharmacies, that would be McKesson would be one of
12 those, correct?

13 A. McKesson is a wholesale distributor, yes.

14 Q. Wholesale distributors who supply pharmacies without
15 appropriate due diligence have caused, and continue to
16 cause, millions of dosage units of oxycodone and other
17 controlled substances to be diverted and pose an imminent
18 threat to the public health and safety. Do you see that?

19 A. Yes.

20 MR. SCHMIDT: Objection here, Your Honor. I
21 apologize. Our objection here, Your Honor, is this is a
22 snippet from a letter from Mr. Rannazzisi. He is going to
23 be here as a witness to testify, we've been told, and
24 there's a suggestion that he's drawing a conclusion as to
25 cause without it being clear as to who it is or --

1 THE COURT: Yeah. That's sustained, Mr. Rafferty.

2 MR. RAFFERTY: Well, if I could, just for the
3 record, Your Honor, that I think it was admitted, and it was
4 admitted for notice, and I think this statement, which as
5 Mr. Ackerman said --

6 THE COURT: Well --

7 MR. RAFFERTY: It goes to the notice as to what
8 the wholesale distributor's responsibilities are and what
9 can result if they do not engage in those responsibilities
10 according to the DEA. So, I think, based upon your prior
11 ruling, sir, that it would -- it is admissible for the
12 limited purposes of notice.

13 MR. SCHMIDT: At best, it is an opinion from
14 someone who will be here as a witness has also stated in an
15 earlier letter, I think, and just about everybody is
16 following along.

17 THE COURT: Yes. This goes beyond the -- in my
18 view, the notice situation, and it's -- it's an opinion of
19 Mr. Rannazzisi and I sustain the objection.

20 MR. RAFFERTY: Your Honor, once again --

21 THE COURT: Go ahead, Mr. Rafferty. If you want
22 to put something on the record, you have the right to do
23 that.

24 MR. RAFFERTY: Yeah. I'm sorry, Your Honor. Just
25 for the record, this is from the Senior Vice President

1 telling the other employees and putting that statement out
2 there and, therefore, there is an indicia of reliability.
3 They adopted it. And for simple purposes of notice, I
4 believe it qualifies and is not -- is not following the
5 hearsay --

6 THE COURT: Your objection is shown for the
7 record. I think it goes beyond that. It's a very -- well,
8 it's an opinion of a DEA agent and I'm going to sustain the
9 objection.

10 MR. RAFFERTY: Thank you, Your Honor.

11 THE COURT: The exhibit is in, but the Court is
12 not going to consider that one panel for anything at this
13 point.

14 MR. RAFFERTY: Thank you for the clarification,
15 Your Honor.

16 BY MR. RAFFERTY:

17 **Q.** I want to now show what's been marked as 16210. I
18 don't know why. These are very slippery. Thank you very
19 much.

20 Do you have it?

21 **A.** Yes, I do.

22 MR. RAFFERTY: May I proceed, Your Honor?

23 THE COURT: Yes, please.

24 BY MR. RAFFERTY:

25 **Q.** Who is -- this appears at the top to be a document --

1 if you look at the corner, it says McKesson with their logo.

2 Do you see that?

3 **A.** Yes.

4 **Q.** And it says McKesson -- down at the bottom, it says
5 McKesson Corporation privileged and confidential. For
6 internal use only. Do you see that?

7 **A.** Yes, I do.

8 **Q.** Who was Gary Boggs?

9 **A.** Gary Boggs, at the time of this document -- documents
10 excuse me -- presentation was a consultant to McKesson.

11 **Q.** Okay. And do you know what his background is, who he
12 is?

13 **A.** Yes. He then became a Vice President of Regulatory
14 Affairs for McKesson and, prior to that, he was with the DEA
15 for many years.

16 **Q.** Okay. And do you recall this presentation or
17 PowerPoint?

18 **A.** Yes, I do.

19 MR. RAFFERTY: And at this point -- at this time,
20 Your Honor, we would tender P -- I'm sorry -- P-16210.

21 MR. SCHMIDT: Your Honor, we'll object on -- it's
22 rife with hearsay and it's got geographic scope issues. And
23 I think I'll do this as it comes in, but the use that's been
24 made previously of this is unduly prejudicial.

25 THE COURT: Do you want to respond to that?

1 MR. RAFFERTY: Well, I see Mr. Ackerman standing
2 up, so I think he wants to.

3 MR. ACKERMAN: I'm happy to do it, Your Honor. We
4 can start with hearsay and it's the same analysis we went
5 through with the other presentation, Your Honor. This is a
6 statement made by the party's agent or employee on a matter
7 within the scope of that relationship and while it existed.
8 That's 801(d)(2)(D).

9 THE COURT: Well, what about all the hearsay
10 within the hearsay, like here, the 6.8 million Americans
11 prescription drug abuse in 2012?

12 MR. ACKERMAN: So, I would -- I would have two
13 responses to that, Your Honor. First of all, those were
14 statements that were incorporated into a presentation to
15 McKesson by its consultant that indicates a manifestation
16 that they believe the statements to be true. Even if they
17 did not, they can be admitted for notice to McKesson. It
18 demonstrates the company's knowledge of the facts contained
19 within the presentation.

20 MR. SCHMIDT: And, Your Honor, I don't -- I
21 apologize.

22 MR. ACKERMAN: Let me just finish addressing all
23 of them. With respect to the geographic scope, Your Honor,
24 I would note that both Page 24 and Page 36 of the
25 presentation have -- say things like a national epidemic and

1 fixing a national problem. So, we believe this document is
2 national in scope and not limited to one geography or
3 another.

4 MR. SCHMIDT: And, Your Honor, our basic point is
5 that -- let me give an example. Page 16 of this document.
6 That just because we have a consultant come in to give a
7 presentation doesn't mean that everything he uses is
8 adopted.

9 The left side of Page 16 is a -- looks like a Hollywood
10 movie photo he's using to illustrate a point.

11 The right side, they've used with a number of our
12 witnesses. It's never been linked to a McKesson pharmacy.
13 There's imagery in here, Page 19, which feature body bags
14 from some crisis to illustrate a point he's making about
15 deaths. Those -- that image has nothing to do with
16 prescription opioids. There was never a horrifying pile of
17 those body bags.

18 And then, just continuing through, it's rife with
19 hearsay. Reports from the DEA about actions in New York.
20 Reports in the DEA -- from the DEA about actions in Tampa.
21 Reports from the DEA about a doctor in Philadelphia. That's
22 core hearsay.

23 THE COURT: It's out.

24 MR. ACKERMAN: Your Honor --

25 THE COURT: The objection is sustained.

1 MR. ACKERMAN: May I make a record, please, Your
2 Honor?

3 THE COURT: Yes, you may.

4 MR. ACKERMAN: So, with respect to the prejudicial
5 argument, I would note that the Fourth Circuit has
6 determined that the likelihood of prejudice in a bench trial
7 is low because the Court -- because the purpose of that rule
8 is to prevent a jury from being unfairly prejudiced and the
9 Court is confident, as are we, that a judge will be able to
10 balance the factors one way or another.

11 And I would refer the Court to *Schultz v. Butcher* at 24
12 F.3d 626, Page 632, which is a Fourth Circuit opinion from
13 1994. And I believe I already addressed the hearsay. Even
14 without the hearsay, it is admissible as notice to McKesson
15 of the facts contained within the presentation.

16 THE COURT: Can I ask who wrote that opinion in
17 1994?

18 MR. ACKERMAN: That, I don't have, Your Honor, but
19 I'll look it up and give it to you at the break.

20 THE COURT: Well, that's okay. I was just
21 curious.

22 I'm going -- I'm to sustain the objection. I think
23 there's all kinds of hearsay in here. I think it is
24 prejudicial. I think, insofar as it's relevant, the danger
25 of unfair prejudice outweighs its relevancy and I realize

1 this is a bench trial and I can probably sort it out, but I
2 -- there's just so much in here that is just rank hearsay
3 and I'm going to keep it out. The objection is sustained.

4 MR. RAFFERTY: Your Honor --

5 THE COURT: Yes, Mr. Rafferty?

6 MR. RAFFERTY: If I could, I think, I mean,
7 obviously, we stand on our record and we think the whole
8 thing should come in, but there's two pages, quite frankly,
9 that Mr. Boggs wrote in these two PowerPoint slides. One is
10 on Page 37, sir, and one is on Page 46.

11 And those are not inflammatory. They're not
12 prejudicial. They're from Mr. Boggs, the author of the
13 document, and who is a paid consultant. So, it's not
14 hearsay under 801(d)(2)(D).

15 THE COURT: 37 and 46?

16 MR. RAFFERTY: 37 and 46, yes, sir.

17 THE COURT: And those are statements by Mr. Boggs?

18 MR. RAFFERTY: He's the author of the PowerPoint,
19 yes, sir.

20 THE COURT: Okay. Mr. Schmidt, what about that?

21 MR. SCHMIDT: If he wants to use just those
22 statements for the limited purpose of notice that a
23 consultant came in and made those statements, we don't
24 object to that.

25 THE COURT: All right. I'll admit -- I'll admit

1 those two pages, exempting them from my prior ruling that
2 this is inadmissible, and I will admit those two pages for
3 the limited purpose of notice.

4 You may proceed.

5 MR. RAFFERTY: I hate to be a stickler, but is it
6 okay if I put the cover page in, too, just so it's clear
7 what it is?

8 MR. SCHMIDT: No objection to that, Your Honor.

9 THE COURT: Okay. I'm looking for some hearsay on
10 it and I don't see any.

11 MR. RAFFERTY: All right. So, we will then create
12 an Exhibit, 851-A. I'm sorry.

13 THE COURT: Mr. Rafferty, my able law clerk has
14 informed me that Judge Chapman wrote that opinion.

15 MR. RAFFERTY: Okay.

16 THE COURT: And many, many years ago, I had the
17 pleasure to sit with him over there a time or two.

18 MR. RAFFERTY: Well, good.

19 So, I'm sorry. We'll go ahead and create a new exhibit
20 at the break that will be admitted as P-16210A, with just
21 those three pages, while also stating on the record as to
22 the admissibility of the entire deck.

23 THE COURT: All right. So, those are the three
24 pages I admitted?

25 MR. RAFFERTY: Yes, sir.

1 THE COURT: And you want to make a new exhibit
2 just to clean it up the record?

3 MR. RAFFERTY: Right. And that way, we've
4 proffered the entire as to P-16210 and that's been kept out.

5 THE COURT: All right.

6 MR. RAFFERTY: And P-16210A will be --

7 THE COURT: You new exhibit will be admitted --

8 MR. RAFFERTY: Okay, thank you.

9 THE COURT: -- for the limited purpose stated.

10 MR. RAFFERTY: Okay.

11 BY MR. RAFFERTY:

12 Q. All right. Mr. Oriente?

13 A. Yes.

14 Q. Sorry. If you could, turn to Page 37, please, in that
15 PowerPoint.

16 A. Okay.

17 Q. And it says distributors have great power individually
18 and collectively. Do you see that?

19 A. Yes. That's what's written here.

20 Q. Your DEA registration; ensure timely distribution to
21 prevent an uninterrupted supply; and you control the supply
22 to downstream customers. Do you see that?

23 A. Yes, I do.

24 Q. Do you agree with that, that the distributors have
25 great power?

1 **A.** I wouldn't phrase it that way. What I would say is
2 that the distributors play a role in the distribution of the
3 closed supply chain and great power is the way he phrased
4 it. I wouldn't phrase it that way.

5 **Q.** So, you disagree with Mr. Boggs?

6 **A.** Just in the great power. I wouldn't -- you know, I
7 wouldn't categorize the responsibility and the role we play
8 as great power.

9 **Q.** Okay. If you would now please turn to Page 46, sir.
10 Just let me know when you're there.

11 **A.** Okay.

12 **Q.** And this particular slide says what else impacts
13 diversion, question mark. Do you see that?

14 **A.** Yes, I do.

15 **Q.** And it says compliance with several exclamation points
16 after that. Do you see that?

17 **A.** Yes.

18 **Q.** And that would be compliance with the Controlled
19 Substances Act?

20 **A.** That would be my interpretation, yes.

21 **Q.** To your understanding? I'm sorry.

22 **A.** Yes.

23 **Q.** I should have qualified that. And then underneath it,
24 it says the checks and balances created by the Controlled
25 Substances Act work. Registrants are a force-multiplier.

1 And McKesson is a registrant, correct?

2 **A.** Yes. McKesson is a DEA registrant.

3 **Q.** Okay. Without sustained sources of supply, major
4 diversion schemes wither away. Do you agree with that?

5 **A.** Yes, I would.

6 **Q.** You can set that one aside.

7 **A.** All right. Thank you.

8 **Q.** You understand when you took your position as Director
9 of Regulatory Affairs, McKesson was finalizing a Settlement
10 Agreement with the DEA, correct?

11 **A.** Yes, it was.

12 **Q.** And that settlement related to violations of the CSA by
13 McKesson; true?

14 MR. SCHMIDT: Object to characterization, Your
15 Honor.

16 THE COURT: Sustained.

17 BY MR. RAFFERTY:

18 **Q.** During this same time period, McKesson was launching
19 the CSMP that we talked about earlier; true, 2008?

20 **A.** Yes. The CSMP was launched in 2008.

21 **Q.** And you know that the CSMP was implemented as a result
22 and function of that settlement with DEA and McKesson,
23 correct?

24 **A.** I believe it was, yes.

25 **Q.** So, making -- creating the CSMP wasn't something that

1 you came up with -- McKesson. When I say you, I mean
2 McKesson came up with on their own? It was part of the
3 negotiation with the DEA; true?

4 **A.** I wouldn't know the specific reasons. You know, I
5 wasn't at that highest level to create the program, so I --
6 I don't know the exact reason of -- and it may have been one
7 of the reasons, yes.

8 **Q.** Okay. I want to hand you what's been marked for
9 purposes of identification, sir, as P-23733?

10 **A.** Thank you. Yes.

11 **Q.** Are you there? Okay. At the top, it says Settlement
12 and Release Agreement and Administrative Memorandum of
13 Agreement. Do you see that?

14 **A.** Yes, I do.

15 **Q.** And if you'd turn to Page 18, sir, and just let me know
16 when you're there.

17 **A.** Yes, sir.

18 **Q.** Okay. You'll see that this is signed by John
19 Hammergren as President?

20 **A.** Yes.

21 **Q.** Okay. And his signature is dated April 28th, 2008,
22 correct?

23 **A.** Yes.

24 **Q.** And then also, Donald Walker, Donald G. Walker, I
25 should say, Senior Vice President, and his signature is

1 dated April 30th, 2008. Do you see that?

2 **A.** Yes, I do.

3 **Q.** So, this is signed by both the President and the Senior
4 Vice President at the time of McKesson, Corp.; true?

5 **A.** Yes.

6 MR. RAFFERTY: At this time, Your Honor, we would
7 move to admit 23733.

8 MR. SCHMIDT: And, Your Honor, we'll renew the
9 objection we made pretrial and that's been made throughout
10 trial, which is this is inadmissible under 403 and it is
11 simply allegations with no acceptance of responsibility, but
12 also geographic scope because it relates to facilities that
13 did not primarily supply to Huntington-Cabell.

14 THE COURT: Mr. Rafferty, do you want to respond
15 to that?

16 MR. RAFFERTY: Yeah. This is the -- these are the
17 settlements, this one, and then there was a 2017 settlement
18 that was a subject of the motions in limine that Your Honor
19 ruled on pretrial as to their admissibility, agreeing with
20 Judge Polster as to their admissibility and going to notice
21 and is not hearsay.

22 THE COURT: Mr. Ackerman, we haven't heard from
23 you here.

24 MR. ACKERMAN: Always happy to jump in, Your
25 Honor. Well, I would refer you --

1 MR. RAFFERTY: I didn't convince you?

2 MR. ACKERMAN: I would refer the Court to
3 801(d)(2)(B), as in broccoli. A statement the party adopted
4 or believed to be true is our settlement and release
5 agreements, memorandum of agreements, that are signed by
6 McKesson.

7 MR. SCHMIDT: Yeah. And under that grounds, I
8 think it especially stays out. It says this agreement is
9 neither an admission by McKesson of liability or of any
10 allegations made by DEA in the orders and investigation.

11 MR. ACKERMAN: It's evidence that the allegations
12 were made, Your Honor.

13 THE COURT: I'll overrule the objection and admit
14 it.

15 MR. RAFFERTY: Thank you, Your Honor.

16 BY MR. RAFFERTY:

17 Q. And, in fact, you received a copy of this Settlement
18 Agreement?

19 A. Yes, I did.

20 Q. Okay. So, you're familiar with this Settlement
21 Agreement, correct?

22 A. Somewhat familiar, yes.

23 Q. In fact, if I'm not mistaken, you had a two-day meeting
24 with you and the other Regulatory Affairs -- Regulatory --
25 Regulatory Affairs folks at McKesson about this particular

1 settlement, correct?

2 **A.** I don't recall that exact meeting, no.

3 **Q.** Okay. All right. Before we go there, I would like you
4 to turn to Page 13, sir.

5 **A.** Okay.

6 **Q.** Oh, I'm sorry. Before we do that, go back to Page 1.
7 I'm sorry. I don't mean to make you flip back and forth. I
8 just want to make sure I get this all straight.

9 So, this was -- this was the Settlement Memorandum of
10 Agreement in May -- on May 2nd, 2008, correct?

11 **A.** Yes. That's what it has here.

12 **Q.** And this was a -- this was in a settlement involving
13 conduct that would be applicable -- or strike that.
14 Applicability, let's just read it. Applicability -- an
15 agreement shall be -- this agreement shall be applicable to
16 McKesson and all McKesson DEA registered facilities as
17 identified in Appendix A. Do you see that?

18 **A.** Yes. That's what's written here.

19 **Q.** Okay. So, this was a national settlement; true?

20 MR. SCHMIDT: Object to characterization and
21 inconsistent with the document.

22 THE COURT: Sustained.

23 BY MR. RAFFERTY:

24 **Q.** All right. Now, we can turn to the Tab -- let's see.
25 Wait one second. Point 5. Do you see that? Are you there?

1 **A.** On what page?

2 **Q.** I'm sorry. 5.

3 **A.** Oh, yes.

4 **Q.** Okay. And under (h), McKesson had agreed to pay civil
5 penalties under certain statutes in the amount of 13.25
6 million in settlement claims or potential claims made by the
7 United States of America for failing to report suspicious
8 orders of controlled substances and for failing to report
9 thefts or significant losses of controlled substances.

10 THE COURT: I think I'm confused about the page
11 here, Mr. Rafferty.

12 MR. RAFFERTY: Oh, I'm sorry, Your Honor. It's
13 Page 5, (h) at the top right here. Right here, Your Honor.
14 Page 5.

15 Did I give you a bad copy?

16 THE COURT: Oh, you're looking at the -- well, go
17 ahead. Go ahead.

18 MR. RAFFERTY: Okay.

19 THE COURT: I don't have it, but it's all right.
20 Go ahead.

21 MR. RAFFERTY: All right. I'm sorry, Your Honor.

22 BY MR. RAFFERTY:

23 **Q.** Do you see that?

24 **A.** Yes, I do.

25 **Q.** Okay. And then, if you go to Page 3 --

1 MR. RAFFERTY: I feel like I may have given some
2 bad copies. I see people flipping around trying to find it.

3 Good? Okay. All right. I just wanted to make sure.

4 May I proceed, Your Honor?

5 THE COURT: Yes.

6 By MR. RAFFERTY:

7 Q. So, if we look at (h) -- or, I mean, I'm sorry, (2),
8 terms and conditions, obligations of McKesson, and it says
9 there McKesson agrees to maintain a compliance program
10 designed to detect and prevent diversion of controlled
11 substances as required under the CSA and applicable DEA
12 regulations. Do you see that?

13 A. Yes, I do.

14 Q. Okay. And this program shall include procedures to
15 review orders for controlled substances. Orders that exceed
16 established thresholds and criteria will be reviewed by a
17 McKesson employee trained to detect suspicious orders for
18 the purpose of determining whether such orders should be not
19 filled and reported to the DEA or, based on a detailed
20 review, the order is for a legitimate purpose and the
21 controlled substances are not likely to be diverted into
22 other than legitimate medical, scientific, or industrial
23 channels. Did I read that correctly?

24 A. Yes, you did.

25 Q. And that's -- this is the time period when McKesson

1 then was creating the CSMP in order to try and comply with
2 this agreement; is that your understanding?

3 **A.** That is my understanding.

4 **Q.** Okay. And a couple of things I just want to point out
5 here. And then if you go down, it says, this compliance
6 program shall apply to all current and future McKesson
7 distribution centers registered with the DEA in the United
8 States and its territories and possessions. Do you see
9 that?

10 **A.** Yes, I see that.

11 **Q.** And then it says McKesson acknowledges and agrees that
12 the obligations undertaken in this subparagraph do not
13 fulfill the totality of its obligation to maintain effective
14 controls against the diversion of controlled substances or
15 to detect and report to DEA suspicious orders for controlled
16 substances. Do you see that?

17 **A.** Yes, I do.

18 **Q.** Okay. And you would have been one of the people when
19 you became a Director of Regulatory Affairs that was
20 supposed to -- was supposed to review thresholds and
21 criteria by McKesson employees trained to detect suspicious
22 orders. That was part of your role when you became a DRA;
23 true?

24 **A.** Yes, I did do that responsibility.

25 **Q.** And if we go now to Document --

1 MR. RAFFERTY: I'm going to start another
2 document, Your Honor, if you want -- would like me to or if
3 you want me to --

4 THE COURT: Well, I've not another proceeding here
5 at noon I've got to take care of, so it might be a good
6 place to pull the plug on it.

7 And, this afternoon, I understand that we're going to
8 go from 1:30 to 5:30 to make up for the hour this morning by
9 being late. So, I will see everybody back at 1:30.

10 MR. RAFFERTY: Thank you, Your Honor.

11 (Recess taken)

12 THE COURT: Mr. Fuller?

13 MR. FULLER: Yes, Your Honor. How are you this
14 afternoon?

15 THE COURT: I'm good, thank you.

16 MR. FULLER: Judge, just as cleanup from the other
17 day, we're going to move in -- Cardinal has had a chance to
18 review and we're going to go ahead and move them into
19 evidence.

20 So, by agreement of the parties, 42100, 42102, 42103,
21 42107, 42113, 4214, 4215 --

22 COURT REPORTER: I'm sorry. Can you --

23 MR. FULLER: I'm sorry.

24 COURT REPORTER: What was after 107 --

25 MR. FULLER: 4213.

1 COURT REPORTER: Okay.

2 MR. FULLER: -113, 42114, 42115, 42117, 42118,
3 42123, and 14288.

4 Judge, that's already been submitted to the clerk.

5 THE COURT: Is there any objection to any of
6 these, Ms. Hardin?

7 MS. HARDIN: No objection, Your Honor.

8 THE COURT: All right. They're all admitted.

9 MS. MCCLURE: Your Honor, for ABDC, just
10 confirming that those are all Cardinal-related documents
11 that you've just read.

12 MR. FULLER: No. I worked with Cardinal to put in
13 your documents. No, I'm kidding.

14 MS. MCCLURE: Thank you, Mr. Fuller.

15 MR. FULLER: Yes, ma'am.

16 THE COURT: All right. They're all admitted.

17 Go ahead, Mr. Rafferty.

18 MR. RAFFERTY: While the witness is coming back to
19 the stand, just for the record, we modified the Plaintiff
20 16210 to just the three slides and submitted to the clerk as
21 16210A.

22 MR. SCHMIDT: And we have that. We appreciate
23 that.

24 THE COURT: And are you -- Mr. Schmidt, are you
25 retaining an objection to these two pages?

1 MR. SCHMIDT: No. I don't think we had an
2 objection to those two pages other than it's -- it's for the
3 purpose of notice.

4 THE COURT: Okay. 16210A is admitted. I think I
5 already admitted it, but it won't hurt to readmit it.

6 THE COURT: All right. We need the witness,
7 please.

8 Mr. Oriente, you're still under oath, of course.

9 THE WITNESS: Yes, sir. Thank you, Your Honor.

10 MR. RAFFERTY: May I proceed, Your Honor.

11 THE COURT: Yes, you may.

12 BY MR. RAFFERTY:

13 **Q.** Good afternoon, Mr. Oriente.

14 **A.** Good afternoon.

15 **Q.** When we broke for lunch, we were talking about the 2008
16 settlement and I just want to close the loop on that. I'm
17 going to show you what's been marked as P-0011. There you
18 are, sir.

19 **A.** Thank you.

20 **Q.** Mr. Oriente, are you there?

21 **A.** Yes, I'm here.

22 **Q.** Okay. This is an e-mail from you dated March 7th, 2008
23 to Don Walker. And then I see that group that we talked
24 about earlier, that e-mail group, PGRDRC.

25 **A.** Yes, sir.

1 Q. Okay. And it says, Team, here are the notes from our
2 meeting. And when you turn the page, it's got a cover --
3 it's got a memorandum that says Regulatory Meeting,
4 Carrollton 3/5 and 3/6/08. Do you see that?

5 A. Yes.

6 Q. And, in fact, you were one of the attendees of that;
7 true?

8 A. Yes, I was.

9 MR. RAFFERTY: At this time, Your Honor, we would
10 move in P-00011.

11 THE COURT: Any objection?

12 MR. SCHMIDT: Your Honor, this document has some
13 embedded hearsay, but I think the better course would be to
14 admit the document and I'll just object to the embedded
15 hearsay if it comes up.

16 THE COURT: Okay.

17 BY MR. RAFFERTY:

18 Q. First --

19 THE COURT: It's admitted subject to specific
20 objections about hearsay or other problems.

21 Go ahead, Mr. Rafferty.

22 MR. RAFFERTY: Thank you, Your Honor.

23 BY MR. RAFFERTY:

24 Q. First of all, the attendees, Mr. Oriente, we have Mr.
25 Walker, Bruce Russell, Mr. Hilliard that we discussed, Tom

1 McDonald, Tracy Jonas, Bill Mahoney and then yourself. Are
2 all of those employees of McKesson?

3 **A.** Yes. Some are not current but, yes, they were at this
4 time.

5 **Q.** Yeah, at that time, I'm sorry. Thank you for the
6 clarification.

7 And it says Wednesday, 3/5/2008. Items that will be
8 covered during the meeting: Memorandum of Agreement. 2 to
9 3 weeks expect sign-offs with the DEA. And then new CSMP
10 Program. Do you see that?

11 **A.** Yes.

12 **Q.** Okay. And I had asked you earlier if you had had -- if
13 you all had had a two-day meeting about the 2008 Settlement
14 Agreement and the establishment of the CSMP. Do you recall
15 this meeting in Carrollton?

16 **A.** Yes, I do.

17 **Q.** Okay. All right. And if you go -- there's just a few
18 questions I have for you in this particular document. If
19 you go down to Memorandum of Agreement, it says three
20 points. And I want to go down to the one that says
21 agreement will cover. Do you see that?

22 **A.** Yes.

23 **Q.** Okay. Agreement will cover all 39 McKesson DEA
24 registrants. Now, McKesson has 39 DEA registrants because
25 each -- each Distribution Center is a DEA registrant; true?

1 **A.** Yes. Each Distribution Center would need a
2 registration, yes.

3 **Q.** Okay. All right. And it says covered conduct, three
4 points. Failure to maintain adequate controls against
5 diversion. And then, the third one there, failure to detect
6 and report suspicious orders of controlled substances. Do
7 you recall that being discussed and the subject -- part of
8 the subject of this meeting?

9 **A.** Yes. That was some of the information, yes.

10 **Q.** Okay. And then if we turn this page and we go to --
11 down at the bottom where it says factors influencing DEA
12 civil penalty, it says it involved multiple DCs. That's
13 distribution centers; true?

14 **A.** Yes, DCs stood for distribution centers.

15 **Q.** Multiple DCs estimated to be over 4,600 violations. Do
16 you see that?

17 MR. SCHMIDT: This is -- I apologize. This is
18 where we would object on embedded hearsay and foundation. I
19 think this is a report back of what someone was told.

20 THE COURT: How do we know there were 4,600
21 violations, Mr. Rafferty?

22 MR. RAFFERTY: I'm sorry?

23 THE COURT: How do we know that 4,600 is an
24 accurate figure?

25 MR. RAFFERTY: Well, this is a meeting of the

1 regulatory people, Your Honor, that were active and involved
2 with the 2008 Settlement Agreement, including the Senior
3 Vice President, Mr. Walker, and he was involved in meetings
4 with the DEA. And this is all employees of McKesson
5 discussing the parameters of the 2008 settlement, including
6 the number of violations.

7 And so, because they're all employees, they'd all be --
8 they'd all be -- all be statements of an adverse party
9 employee, which is 801(d)(2)(D). And also, it's notice to
10 everybody else of the DRA that these -- of the nature of the
11 violations and the systemic nature of the violations.

12 MR. SCHMIDT: Your Honor, if they want to use this
13 for notice that someone at DEA made this allegation to them,
14 I don't object to that. It's the truth of the matter that
15 is objected to and that's nowhere in the settlement and, in
16 fact, the settlement says to the contrary.

17 THE COURT: All right. I'm going to admit it for
18 that limited purpose, Mr. Rafferty.

19 MR. RAFFERTY: Thank you, Your Honor.

20 THE COURT: And not for the truth.

21 BY MR. RAFFERTY:

22 **Q.** Do you see there where it says there are many factors
23 influencing the decision. It involved multiple DCs,
24 estimated to be over 4,600 violations?

25 **A.** Yes. That's what's written here.

1 **Q.** Okay. And it says DEA looked at multiple time periods,
2 shipments to pharmacies that turned out to be internet
3 pharmacies, shipping millions of dosages to a couple of
4 pharmacies that later were indicted. Do you see that?

5 **A.** Yes. That's what's written here.

6 **Q.** Do you recall that being a discussion at your meeting?

7 **A.** One of the things that was covered, yes.

8 **Q.** Okay. And that -- and the reason it was being
9 discussed is because that was a serious and systemic issue,
10 true?

11 MR. SCHMIDT: Objection, foundation.

12 MR. RAFFERTY: I'm asking.

13 THE COURT: Sustained. You can try to get it out
14 of him, Mr. Rafferty, in other ways.

15 BY MR. RAFFERTY:

16 **Q.** Well, let's go -- let's do it this way. Let's go over
17 to Page 4, Mr. Oriente, and at the top under Termination of
18 the Suspension, continued right underneath that bullet point
19 there is a line that says our documentation must be in
20 order. Do you see that?

21 **A.** Yes.

22 **Q.** We cannot have a repeat occurrence. Do you see that?

23 **A.** Yes.

24 **Q.** Now, you -- did you author these notes?

25 **A.** I believe I took the notes from the meeting. You know,

1 this would not have been my, you know, writing. It probably
2 came from other documents and I summarized them.

3 **Q.** Okay. And you have that in bold, if that's you. Did
4 you -- did you write that in bold and underline?

5 **A.** I believe that's the way it was stated from other
6 documents.

7 **Q.** Okay. And is it your understanding the reason that you
8 could not have another repeat occurrence was because this
9 was a serious and systemic issue?

10 MR. SCHMIDT: Objection, foundation.

11 THE COURT: Sustained.

12 MR. RAFFERTY:

13 **Q.** Going on to the final portion I want to ask you about,
14 Mr. Oriente, is on Page 6, sir.

15 **A.** Yes.

16 **Q.** Okay. And here, once again, this is Day 2, it appears,
17 and you've got the attendees listed there again. Do you see
18 that?

19 **A.** Yes.

20 **Q.** Except on this one, I think it adds Dave Gustin on the
21 conference call. Do you see that?

22 **A.** Yes, it does.

23 **Q.** Okay. Who is Dave Gustin?

24 **A.** Dave Gustin was a DRA for the North Central region for
25 McKesson.

1 Q. Okay. And if we look at that, it says -- under
2 thresholds, I'm sorry, sir, Mr. Oriente, under thresholds,
3 the sixth bullet -- I'm sorry, fourth bullet point down.
4 When setting the percentage of controls to purchase, are
5 they for legitimate reasons? Look at large quantities.
6 That's one of the -- that's one of the red flags; true?

7 A. Large quantities would identify us to take an
8 additional review of a customer, yes.

9 Q. And then it says the key -- under thresholds, the key
10 is the appropriate documentation. Do you agree? Do you
11 agree with that?

12 A. Yes. Documentation was part of our due diligence.

13 Q. Do you agree that it is key in regards to thresholds?

14 A. Yes. It would be one key factor.

15 Q. Okay. And then, the next bullet point under that says
16 the key secret is getting the thresholds right from the
17 start-up. Is that accurate?

18 A. Yes. That was very important.

19 Q. Okay. So, you agree with that statement?

20 A. Yes.

21 Q. Okay. And one of the reasons it's important to get the
22 thresholds right from the start is because if you set the
23 thresholds too high, then customers never bump up against
24 that threshold and it never triggers an investigation; is
25 that accurate?

1 **A.** That could occur, yes.

2 **Q.** Okay. And that could result in diversion, correct?

3 **A.** It could possibly be diversion.

4 **Q.** Okay. Thank you. Okay. Then it says -- down further,
5 it says find customers to focus on, run the data and perform
6 analytics. Look at percentage of controls to total
7 purchases. So, total controls to total purchases, describe
8 what that's referring to, please.

9 **A.** Yes. We would take a look in order to set appropriate
10 thresholds because we didn't want them too low where a
11 customer would be prevented from getting some necessary
12 medications and the percent of controls to total purchases,
13 it would define how much business a customer is doing in
14 regular RX product versus their controlled substance
15 business.

16 **Q.** So, it would be red flag, for example, if a -- if a
17 pharmacy was selling a large percentage of controlled
18 substances compared to the rest of their prescriptions;
19 true?

20 **A.** We didn't look at just that one factor. We would take
21 multiple factors. That would be one that we would use to
22 determine if additional due diligence was required, yes.

23 **Q.** Sure. Sure. But that would be one, correct?

24 **A.** Yes.

25 **Q.** Okay. Now, after this 2008 settlement, you're aware

1 that there were further investigations against McKesson
2 Corporation in regards to its Controlled Substance
3 Monitoring Program by the DEA; true?

4 **A.** Yes, there was.

5 **Q.** Okay. And, in fact, some of those -- some of those
6 investigations involved distribution centers that you were
7 the Director of Regulatory Affairs over; true?

8 **A.** Yes. I believe I had a couple, yes.

9 **Q.** Okay. I want to hand you what has been marked as
10 P-00122. There you are, sir.

11 **A.** Thank you.

12 MR. SCHMIDT: Your Honor, if I may just address at
13 the outset, this is what I flagged at the beginning of the
14 day. This is a letter that was part of the lead-up to the
15 2017 settlement between government attorneys and McKesson's
16 attorneys; in this case, one of my partners, about the
17 allegations that the government was making in an effort to
18 resolve a dispute between the government and McKesson that
19 resulted in the 2017 settlement. It even says on its cover
20 it's confidential and subject to Federal Rule of Evidence
21 408.

22 Even without that, it's just not a proper document.
23 It's just not an admissible document in this case and it's
24 certainly not proper with this witness.

25 MR. RAFFERTY: Your Honor, would you like me to

1 wait to respond, sir?

2 THE COURT: Just a minute.

3 MR. RAFFERTY: Okay.

4 THE COURT: Why doesn't it come within 408, Mr.
5 Rafferty?

6 MR. RAFFERTY: Well, it doesn't come in under 408
7 for a number of reasons. Number one, it's not being offered
8 to prove the existence of the deal. It's being proved --
9 it's being offered for notice of their systemic and
10 nationwide failures.

11 In fact, this exact issue was briefed in CT1 and Judge
12 Polster issued an order specifically finding -- and 408 was
13 part of that, along with hearsay and relevancy -- and Judge
14 Polster says specifically, the evidence is relevant among
15 other reasons to prove that McKesson engaged in intentional
16 conduct over many years across the country that was a
17 substantial factor in causing the harm to the plaintiffs and
18 they were on notice of the ways in which -- oh, I'm sorry.
19 That's the motion.

20 This is -- it says the Court agrees the letters are --
21 I'm sorry. So, this is what the Court ordered, Judge
22 Polster.

23 The Court agrees the letters are relevant to show
24 McKesson's knowledge of the investigation and the statements
25 contained therein. Accordingly, the Court denies McKesson's

1 motion to exclude these very letters.

2 MR. SCHMIDT: And, Your Honor, just so the Court
3 -- oh, I'm sorry, Mr. Rafferty.

4 MR. RAFFERTY: I was going to say, just so the
5 Court is aware, this also -- the letter in this -- in this
6 particular context specifically finds that the conduct that
7 is discussed in this, which is violations of the Controlled
8 Substances Act and suspicious order reporting, are both
9 serious -- serious systemic and nationwide in terms of
10 failing to report suspicious orders and that even the ones
11 listed in here are simply illustrative, not exhaustive, and
12 they were as systemic as they were serious. So, this goes
13 to the very issue of the systemic and national nature of the
14 failures by McKesson to comply with the CSA.

15 MR. SCHMIDT: Two responses, Your Honor. First,
16 just so the Court understands the context of Judge Polster's
17 ruling. Before trial in the CT1 case, the judge said they
18 may be admissible. After we resolved that case, there was a
19 nunc pro tunc order, and that's what they're relying on, an
20 order after the case was resolved when we didn't have a
21 chance to address what the Court was doing and the Court did
22 not issue that ruling in the context of an active dispute.

23 As to the use of these letters, it's clear from what
24 Mr. Rafferty said that they are using them for the
25 allegations in them, which is squarely within 408. There's

1 no question about notice. McKesson was on notice from 2013
2 forward that the DEA was looking into them. That resulted
3 in the 2017 settlement.

4 But to take allegations from lawyers as part of a
5 dispute where the adverse lawyer is even characterizing
6 their letters as for purposes of settlement, where they're
7 making allegations to encourage a settlement, that could not
8 be more heartland 408 and more improper on other grounds.

9 MR. ACKERMAN: Your Honor, with respect to Judge
10 Polster's order, he wrote in his evidentiary order, which
11 was entered into December of 2019, these rulings will apply
12 to all future cases in this MDL that are tried by this
13 Court. Additionally, as a general matter, these rulings
14 apply to remanded cases tried by transferor courts. He then
15 includes a number of citations.

16 In the next paragraph, he stated, in the future, the
17 parties should generally not file in any MDL case a motion,
18 including a motion for reconsideration, addressing an
19 evidentiary issue already addressed below.

20 Judge Polster clearly issued this order in order to
21 provide guidance to future cases and remanded cases.

22 THE COURT: And he let this in, right?

23 MR. ACKERMAN: He did, yes.

24 THE COURT: On what basis did he let it in?

25 MR. ACKERMAN: So, Your Honor, it is -- well, Mr.

1 Rafferty, it's at Page 21 of the order, and he wrote, the
2 Court agrees that the letters are relevant to show
3 McKesson's knowledge of the investigation and the statements
4 contained therein. He let it in for notice and knowledge.

5 MR. SCHMIDT: They're not using it for notice and
6 knowledge. They're using it for the allegations in it.
7 That's what they're clear about.

8 And the suggestion that after we settled the case Judge
9 Polster entered an order that bound everyone forever when he
10 didn't have this evidence in front of him the way Your Honor
11 does, I don't think that's well taken.

12 MR. ACKERMAN: We haven't used it at all yet, Your
13 Honor.

14 THE COURT: Ms. Hardin, do you want to say
15 something?

16 MS. HARDIN: I just want to note for the record
17 that we do not agree that Judge Polster's nunc pro tunc
18 order is law of the case. We have briefed that to Your
19 Honor before and you have actually denied their motions
20 asking for you to wholesale enter Judge Polster's order.
21 So, I'll let Mr. Schmidt deal with the document itself, but
22 the representation that Judge Polster's orders govern Your
23 Honor are incorrect in our opinion.

24 THE COURT: You're next, Mr. Nicholas.

25 MR. NICHOLAS: That's all I was -- I just want to

1 chime in and say I completely agree with what Ms. Hardin
2 just said. I don't think you're bound, or I don't think you
3 should be bound, or meant to be bound by Judge Polster's
4 orders in this -- in that fashion.

5 THE COURT: Did he enter this order in this case,
6 Mr. Rafferty?

7 MR. RAFFERTY: In the opioid litigation in the
8 MDL.

9 THE COURT: In the MDL, he entered it?

10 MR. RAFFERTY: Yes, Your Honor.

11 THE COURT: I'm going to sustain the objection.
12 In my opinion, this is covered by 408 and should not come in
13 and I'm not going to admit it.

14 MR. RAFFERTY: Would it -- would it -- okay. For
15 -- just for the record, Your Honor, I think 408 is clear in
16 terms of if it's not being offered for the existence of the
17 -- of the -- for the existence of the agreement for other
18 purposes the law --

19 THE COURT: Well, I know. I've read the rule, Mr.
20 Rafferty, but it seems to me I think Mr. Smith is exactly
21 right. These statements were made in the context of
22 negotiations and they're the position of the lawyer -- or
23 lawyers on one side and I just -- I think it is embraced by
24 408 and it's a long-standing rule that the Court's rulings
25 should not inhibit the efforts of the parties to settle

1 cases.

2 MR. RAFFERTY: I understand that, Your Honor. My
3 concern is that with this -- what I would request then, if
4 we could, is to have an opportunity to brief this. This is
5 a very important issue in the case. The notice -- the
6 notice by this company of the nationwide and systemic
7 failures of their CSMP that resulted in, in fact, Washington
8 Court House, which is one of the distribution centers that
9 services West Virginia and, in fact, services Cabell County
10 is specifically referenced with incidents of egregious
11 conduct and that ultimately end up and is systemic --

12 THE COURT: Can't you prove that some other way
13 than by offering a letter that was -- that was part of an
14 effort to settle a disputed situation?

15 MR. RAFFERTY: Well, at the end of the day, in
16 2017, Your Honor, they did, in fact, admit to liability and
17 admit to responsibility in the 2017 settlement. So, they
18 admitted to these failures, the McKesson Corp did.

19 THE COURT: Well, but --

20 MR. SCHMIDT: I think he answered your question.
21 Yes, we can prove it some other way. I don't think they're
22 going to be able to prove it the way he just described.

23 MR. RAFFERTY: Sorry. I was consulted -- or I was
24 asked to be consulted. No. I think -- and I do think the
25 fact that they ultimately stipulated and accepted

1 responsibility for the violations in here --

2 THE COURT: It's out, Mr. Rafferty. Go on to your
3 next point.

4 MR. RAFFERTY: Okay. Thank you, Your Honor.

5 Oh, yes. Just for the record, Mr. Ackerman reminded
6 me, that document that has been excluded to be offered is
7 P-00122.

8 THE COURT: All right. And the Court sustained
9 the objection thereto by all the defendants in the case.

10 MR. RAFFERTY: If I could have just one moment,
11 Your Honor?

12 THE COURT: Yes.

13 MR. RAFFERTY: I apologize.

14 (Pause)

15 MR. RAFFERTY: We'll move on to a different topic
16 right now.

17 BY MR. RAFFERTY:

18 **Q.** You are aware that, in fact, in 2017, McKesson did
19 enter into an additional Settlement Agreement separate and
20 apart from the one in 2008?

21 **A.** Yes.

22 **Q.** Okay. I'd like to show you what's been marked for
23 purposes of identification as P-42554.

24 **A.** Thank you.

25 **Q.** Let me know when you're ready, sir.

1 **A.** Yes, I'm' ready.

2 **Q.** Okay. You see at the top of this particular document
3 it says Administrative Memorandum of Agreement. Do you see
4 that?

5 **A.** Yes.

6 **Q.** And it reads the Administrative Memorandum of Agreement
7 as entered into by and between the United States Department
8 of Justice, Drug Enforcement Administration, and McKesson
9 Corporation, each a party and collectively the parties. Do
10 you see that?

11 **A.** Yes.

12 **Q.** And, in fact, you received a copy of this in your -- in
13 the course and scope of your work with McKesson; true?

14 **A.** Yes, I did.

15 MR. RAFFERTY: Your Honor, at this time, I would
16 move to enter into evidence P-42554.

17 THE COURT: Is there any objection to 42554?

18 MR. SCHMIDT: Yes. Two, Your Honor. First, we
19 object to this for the same reason we objected to the 2008
20 ruling, which is probably covered by Your Honor's ruling,
21 but we want to preserve our objection to that.

22 Second, there's an appendix missing to this. There's
23 several, but there's one that matters a little bit. And, so
24 if we can just add that appendix with agreement, then that
25 resolves that issue.

1 THE COURT: Well, if you -- I'll accept that, Mr.
2 Rafferty. I will admit it subject to the same restrictions
3 that I admitted the 2008.

4 MR. RAFFERTY: Yes, sir.

5 MR. SCHMIDT: And just with us preserving our
6 objection.

7 THE COURT: Yes.

8 MR. SCHMIDT: Thank you, Your Honor.

9 MR. RAFFERTY: Thank you, Your Honor.

10 BY MR. RAFFERTY:

11 **Q.** Okay. If we look at this particular document, sir, if
12 you'll look first at Page 2, and Paragraph seven, it says on
13 or about November 14th, 2014, McKesson received a letter
14 dated November 4, 2014 from the DEA Office of Chief Counsel,
15 Diversion Regulatory and Litigation Section, stating that
16 DEA was separately pursuing administrative action against
17 McKesson Arora for the conduct outlined in the August 13,
18 2014 letter. McKesson Arora, that is a Distribution Center
19 of McKesson, is it not, sir?

20 **A.** Yes, it is.

21 Excuse me one minute, Your Honor. Your Honor? Your
22 Honor?

23 THE COURT: Yes?

24 THE WITNESS: My screen went off.

25 THE COURT: Okay. Can we -- can we fix that?

1 THE WITNESS: There it is.

2 THE COURT: All right.

3 THE WITNESS: Could you repeat the question,
4 please? I'm sorry.

5 MR. RAFFERTY: Yes.

6 BY MR. RAFFERTY:

7 Q. I think I just asked if it was -- if McKesson Aurora --
8 they referred to McKesson Aurora. That is, in fact, a
9 Distribution Center of McKesson?

10 A. Yes. This particular one, because there are two
11 Auroras, this particular one was Aurora, Colorado.

12 Q. Okay. And then it goes on and says DEA stated that the
13 allegations regarding McKesson's failure to maintain
14 effective controls against diversion of particular
15 controlled substances and failure to design and operate a
16 system to disclose to the registrant suspicious orders of
17 controlled substances was national in scope. Do you see
18 that?

19 MR. SCHMIDT: And, Your Honor, we're now just
20 reading in DEA allegations that are part of background
21 clauses and that I think are quoted from the letter that was
22 just excluded.

23 MR. RAFFERTY: It was merely a foundational
24 question to talk about the different -- the different
25 distribution centers that were being discussed, Your Honor.

1 THE COURT: All right. I'll allow -- I will allow
2 you to question him about that.

3 MR. RAFFERTY: Okay, thank you.

4 BY MR. RAFFERTY:

5 Q. And the DEA was also pursuing administrative
6 investigations of such alleged failure at McKesson WCH. Is
7 that Washington Court House, sir?

8 A. Yes, that would be.

9 Q. And you are aware that that services West Virginia?

10 A. Yes, I am.

11 Q. And, in particular, Wash -- sorry -- Cabell County?

12 A. I would believe so. It wasn't one of my distribution
13 centers, so I didn't really follow it that closely.

14 Q. And was that David Gustin's Distribution Center back
15 when you were -- or back when he was at the company?

16 A. Yes, it would have been.

17 Q. Okay. And he ultimately left the company in what year;
18 do you recall?

19 A. It was a couple of years back, yeah.

20 Q. And then, McKesson Livonia, that's another -- all of
21 these -- just to shortcut, all of these are actual
22 distribution centers of McKesson Corporation; true?

23 A. Yes, they are.

24 Q. Okay. And the McKesson Methuen?

25 A. Methuen.

1 Q. What is it?

2 A. Methuen.

3 Q. Methuen? That is -- that, at that time, was part of
4 your -- or the -- I'm sorry. Let me back up. The conduct
5 being discussed from 2013 to 2014, if it was in Methuen,
6 that would have been at the time that you were Director of
7 Regulatory Affairs, sir, for -- for Methuen?

8 A. Yeah. Just give me a minute. If I had that
9 Distribution Center. There were changes in 2013. I may not
10 have had that Distribution Center. I'm trying to recall.

11 Q. But if you -- if you did, you would have had it up
12 until 2013; true?

13 A. Yes.

14 Q. So, just to kind of put a time period on it --

15 A. Yeah. I believe it was one of mine.

16 Q. 2008 to 2013 would have been -- Methuen would have been
17 yours?

18 A. Yes, sir.

19 Q. Okay. Thank you, sir. And then, McKesson Chicagoland,
20 Delran, from 2008 to 2014, McKesson Delran had been your
21 Distribution Center, sir?

22 A. Yes.

23 Q. And then McKesson LaCrosse, McKesson La Vista, Ruther
24 Glen and West Sacramento. So, out of these, you would have
25 been involved in at least two of those areas, true, two of

1 those distribution centers?

2 **A.** Yeah, two distribution centers.

3 **Q.** Okay. And then, if you turn the page, sir, under
4 acceptance of acceptance of responsibility, were you aware
5 at the time you received this that McKesson actually
6 acknowledged that they had failed to identify or report
7 certain orders placed by pharmacies as a result of this
8 investigation?

9 **A.** Yes.

10 **Q.** And right there in the middle it says McKesson
11 acknowledges that at various times during the period
12 January 1, 2009 up through and including the effective date
13 of this -- of this agreement, do you know what the effective
14 date of that agreement is?

15 **A.** I know it was signed in 2017. I don't know when it was
16 created.

17 **Q.** Okay. So, starting January 9 and up to and through
18 what the effective date is. And it says, it did not
19 identify or report to DEA certain orders placed by certain
20 pharmacies which would have been detected by McKesson as
21 suspicious. Do you see that?

22 **A.** Yes. That's what's written here.

23 **Q.** And then, if we go over to the third page, sir, down
24 underneath -- underneath two -- I'm sorry. This is now Page
25 3. Where am I? Oh, yeah. There it is.

1 Oh, I'm sorry. There is another section, acceptance of
2 responsibility, that we went go through. The Court will
3 have the benefit of the document. And -- but under this
4 covered conduct for purposes --

5 MR. SCHMIDT: Your Honor, I believe it's the
6 identical language.

7 MR. RAFFERTY: I wasn't going to read it.

8 MR. SCHMIDT: Okay, that's fine.

9 MR. RAFFERTY: That's why I was saying I'm not
10 going to waste the Court's time.

11 MR. SCHMIDT: Yeah. I just didn't want there to
12 be a suggestion there was a different --

13 MR. RAFFERTY: Right. Just a separate -- okay.

14 BY MR. RAFFERTY:

15 Q. Anyway, covered conduct, for purposes of this
16 agreement, covered conduct shall mean the following conduct
17 alleged by the government for the covered time period. And
18 I'm going to have you look at that and then read this in and
19 then I'm going to ask you a couple of questions.

20 There's another -- there is another Distribution Center
21 listed here that I would like to talk to you about, but what
22 is the covered conduct that's discussed, sir, here?

23 Here, I can -- I can just do it very quickly. McKesson
24 failed to maintain effective controls against diversion of
25 particular controlled substances into other than legitimate

1 medical, scientific and industrial channels by sales of --
2 to certain of its customers in violation of the CSA.

3 MR. SCHMIDT: And, again, Your Honor, I'll object.
4 We didn't object to the acceptance of responsibility
5 language, but now we're simply reading allegations into the
6 record.

7 MR. RAFFERTY: They agreed to it, Your Honor. And
8 I have agreed to the --

9 MR. SCHMIDT: It's actually false that we agreed
10 to this. That's why there's an acceptance of
11 responsibility.

12 MR. RAFFERTY: Acceptance of responsibility.

13 THE COURT: Well, I'll sustain the objection to
14 you reading this into the record, Mr. Rafferty. The
15 document is in and you don't need to read it.

16 MR. RAFFERTY: Okay.

17 BY MR. KENNEDY:

18 **Q.** So, if we go down the other -- the one other
19 Distribution Center that I wanted to ask you about, it lists
20 right there Landover, Maryland. From 2008 until 2014, would
21 you have been the Director of Regulatory Affairs in charge
22 of that distribution center, sir?

23 **A.** I don't recall if it went as far as 2014, but, yes, I
24 believe in 2008 through about 2013, it would have been mine.

25 **Q.** Okay. Thank you, sir.

1 Now, I want to shift topics a little bit and talk to
2 you in particular about thresholds and threshold -- the
3 setting of thresholds and threshold change requests. Are
4 you familiar with those topics?

5 **A.** Yes, I am.

6 **Q.** Okay. Would you agree with me that thresholds are it
7 core of the McKesson CSMP?

8 **A.** Thresholds are an intricate part, yes.

9 **Q.** Okay. And once a certain threshold is met, then
10 certain obligations are triggered under the CSMP that
11 McKesson has to follow; true?

12 **A.** Yes. Our program, if a customer attempted to order
13 above their threshold, it would then go into our three-level
14 review process.

15 **Q.** Okay. We talked about that earlier, so I don't need to
16 go through that, but the thresholds over time, we talked --
17 well, strike that. Over -- we talked about the importance
18 of getting the thresholds right from the start; do you
19 recall that?

20 **A.** Yes, I do.

21 **Q.** Okay. And when we're setting -- when the CSMP was
22 launched in 2008, there were two different ways of setting
23 thresholds for the -- for different pharmacies or for
24 different customers for the RNAs versus the ISMCs; do you
25 recall that?

1 **A.** Yes. There were two types of customers.

2 **Q.** Okay. And I don't know that we ever identified what
3 ISMC for the Court. That would be the Inter -- Independent
4 Small Medium Chain Pharmacies; is that correct?

5 **A.** That is correct.

6 **Q.** Okay. And then, the RNAs, I think you did describe
7 earlier, Retail National Accounts, the big chains?

8 **A.** Yes. Yes, sir.

9 **Q.** Okay. I want to talk for a few minutes about another
10 document regarding setting thresholds, P-00033.

11 MR. SCHMIDT: Is this a different document? Did
12 you say P-2 or 33?

13 MR. RAFFERTY: P-3. Sorry.

14 BY MR. RAFFERTY:

15 **Q.** Here you are, sir.

16 **A.** Oh, thank you.

17 **Q.** Do you have the document, sir?

18 **A.** Yes, I do. Thank you.

19 **Q.** This is another letter from the Drug Enforcement
20 Administration. This one is dated September 27th, 2006. Do
21 you see that?

22 **A.** Yes, I do.

23 **Q.** And this is signed by, once again, Joseph Rannazzisi.
24 Do you see that?

25 **A.** Yes.

1 **Q.** Okay. And have you -- and I think you testified
2 earlier you've seen other Rannazzisi letters other than the
3 one we showed earlier this morning; is that true?

4 **A.** Yes. There would have been two, the one this morning
5 and this one.

6 **Q.** Okay. All right.

7 MR. RAFFERTY: So, at this time, Your Honor, we'd
8 move in P-00033.

9 MR. SCHMIDT: We object only insofar as it's
10 coming in for the truth as hearsay, but we don't object to
11 it coming in for the limited purpose of notice.

12 THE COURT: I will admit for limited purposes, Mr.
13 Rafferty, and it will be admitted.

14 MR. RAFFERTY: Thank you, Your Honor.

15 BY MR. RAFFERTY:

16 **Q.** If we look at this particular letter, as I said, it's
17 dated September 27th, 2006, and I want to ask you a very
18 limited question here. On Page 2, it indicates in this
19 letter that -- in that paragraph right here starting with a
20 distributor in the last -- second to last full paragraph,
21 second line. It says a distributor may not simply rely on
22 the fact that the person placing the suspicious order is a
23 DEA registrant and turn a blind eye to the suspicious
24 circumstances. My question is, do you agree with that?

25 **A.** Yes. McKesson only shipped to DEA registered

1 pharmacies and hospitals.

2 **Q.** Right. But my question is, is just because they are --
3 the person you're shipping to is a DEA registrant, that
4 doesn't relieve you of your obligations under the CSMP,
5 correct?

6 **A.** Correct.

7 MR. SCHMIDT: And just so I state a quibble that I
8 don't think affects the question, just so that we have the
9 record clear, I think you referenced the CSMP. It wasn't in
10 the place at that time, by I think your broader point is as
11 to our relevant policy stance.

12 MR. RAFFERTY: Yes. I'll rephrase it. Thank you.

13 MR. SCHMIDT: Okay. Sorry.

14 MR. RAFFERTY: No, thank you.

15 BY MR. RAFFERTY:

16 **Q.** It didn't relieve you of your obligations to prevent
17 diversion and maintain effective controls against diversion,
18 correct?

19 MR. SCHMIDT: Objection to the foundation in terms
20 of legal obligation.

21 THE COURT: Overruled. I think -- I think you've
22 laid the foundation for this testimony. You can ask him,
23 Mr. Rafferty.

24 THE WITNESS: Could you repeat the question,
25 please?

1 BY MR. RAFFERTY:

2 Q. Yes. Simply because you are shipping to a pharmacy
3 that is a DEA registrant does not relieve you of your
4 obligations to maybe obtain effective controls against
5 diversion?

6 A. Yes. That would be correct.

7 Q. Okay. So, we talked a little bit about your role with
8 the RNAs and, in particular, Rite Aid; do you recall that?

9 A. Yes.

10 Q. Okay. Since 2008, since you've been there and you've
11 been -- and Rite Aid has been a customer that you have
12 serviced as a DRA since that time up until you went to the
13 RNA Division --

14 A. Correct.

15 Q. Okay. And that's been -- and they've been one of the
16 biggest customers of McKesson; true?

17 A. They are a large chain, yes. They -- they've gotten
18 smaller over the last few years. They sold off some of
19 their stores.

20 Q. When the CSMP was launched, Rite Aid actually
21 approached you and wanted to be opted out of the CSMP; is
22 that correct?

23 A. Thresholds which were created at the start of the CSMP
24 program were something that was brand new. Rite Aid had
25 their own compliance and regulatory team, as all of the

1 chain stores do, the large chain stores. And so, Rite Aid
2 was basically wondering, you know, why did they need to have
3 these thresholds set on their stores when they felt that
4 their stores were compliant to the -- in following the rules
5 that they needed to as a -- as a distributor because when
6 CSMP started, Rite Aid was also distributing to their own
7 stores.

8 **Q.** Okay. Let's talk about that for a few minutes. So,
9 you -- when the CSMP came on board, did they opt out or did
10 they want to opt out?

11 **A.** They requested not to be in the program, yes.

12 **Q.** Okay. If I could, I'd like to show you what's been
13 marked as 13288.

14 **A.** Thank you.

15 **Q.** Do you have in front of you what appears to be an
16 e-mail? And when you look at these e-mail strings, if you
17 start at the top, that's the most recent one from Don Walker
18 to you dated June 12th, '08?

19 **A.** Yes.

20 **Q.** And that is in response to an e-mail June 11th, '08; do
21 you see that?

22 **A.** Yes, I do.

23 **Q.** Okay. And it says, Don, I received a call from Ed
24 Bissler today. Who is Ed Bissler?

25 **A.** Ed Bissler -- excuse me. Ed Bissler was the Vice

1 President of Sales over that chain for McKesson.

2 **Q.** Okay. And, at this point, in June of '08, the CSMP has
3 been implemented; is that true?

4 **A.** Yes. It had just been implemented in the month before,
5 in May.

6 **Q.** Thank you, sir. And it says here, this is the first I
7 heard of their dissatisfaction. It appears it may have been
8 brewing for sometime where they are at the point of asking
9 for a suspension of the program. Do you see that?

10 **A.** Yes, I do.

11 **Q.** Okay. And you're forwarding this e-mail, I should have
12 said you're forwarding -- or, yeah, you're forwarding this
13 e-mail to Mr. Walker, which included the e-mail down at the
14 bottom from Mr. Bissler. Do you see that?

15 **A.** Yes.

16 **Q.** And, in fact, on the second page, this is the official
17 request by Rite Aid to be opted out of the CSMP where it
18 says following our meeting concerning the Controlled
19 Substance Monitoring Program, Rite Aid is officially
20 requesting the CSMP be suspended or modified for Rite Aid in
21 such a way as to prevent them from being cut off from
22 supply. Do you see that?

23 **A.** Yes. That's what's written here.

24 **Q.** And then, ultimately, you had -- you forwarded this
25 e-mail on to Mr. Walker and, down at the bottom, I'm not

1 going to read the whole e-mail to you, but I'm going to ask
2 you a question about the last two sentences. I asked Ed
3 what was being presented to Rite Aid daily and he said they
4 are being sent the threshold --

5 COURT REPORTER: I'm sorry. You're going to have
6 to slow down.

7 MR. RAFFERTY: I'm sorry.

8 COURT REPORTER: Thank you.

9 MR. RAFFERTY: I'm sorry. I do do that. I
10 apologize.

11 BY MR. RAFFERTY:

12 **Q.** He said, I asked Ed what was being presented to Rite
13 Aid daily and he said they are being sent the threshold
14 report daily. Do you see that?

15 **A.** Yes. That's written here.

16 **Q.** What is -- what does that mean, the threshold report?

17 **A.** Early in the program, a Threshold Percentage Report was
18 shared with customers so they -- on the retail national
19 accounts, it was shared with their corporate office, not
20 with the individual pharmacies. So, the pharmacy never knew
21 what their threshold was or where they were as far as the
22 percentage. The corporate office -- the corporate
23 regulatory office of Rite Aid would have received a report
24 letting them know where their stores stood in reference to
25 hitting their threshold.

1 **Q.** Generally speaking, under the CSMP when it was
2 implemented, sir, was it the policy of McKesson to not send
3 out to customers what their threshold limits are?

4 **A.** Yes.

5 **Q.** Okay. And why is that?

6 **A.** If a customer knew what their threshold was, they could
7 order up to that threshold and not receive a blocked order.

8 **Q.** Therefore, not triggering the three-level review that
9 we've discussed; true?

10 **A.** Yes. That would be true.

11 **Q.** Okay. Have you heard that referred to as managing
12 against a number?

13 **A.** No, I haven't.

14 **Q.** Okay. So, but, in fact, what you did instead of
15 letting people -- letting customers know what their levels
16 were is, you would call them as they got close to their
17 threshold. When I say you, I mean McKesson. I'm sorry.
18 True?

19 **A.** What was your question?

20 **Q.** Yes. You wouldn't give them -- you wouldn't tell them
21 what their threshold level is for, for example, oxycodone,
22 but what you would do is you would reach out to the
23 customer, the pharmacy, and let them know that they are
24 bumping up against their threshold and ask if they want a
25 threshold change?

1 **A.** Not the individual pharmacy. It would go to their
2 corporate office and then they would be told that, you know,
3 they're approaching their threshold, but the pharmacy did
4 not get that information. The Rite Aid Corporation would
5 have gotten its threshold report.

6 **Q.** But Rite Aid, as a corporation, would get that request?

7 **A.** Yes, as a corporation, not the individual pharmacy.

8 **Q.** And then they would make a decision on whether or not
9 they want an increase; true?

10 **A.** They would do their reviews, also, that their
11 Regulatory Department would routinely do, yes.

12 **Q.** Okay. And if they indicated that they did want an
13 increase, then you would give them the increase; true?

14 **A.** No, not always.

15 **Q.** Not always?

16 **A.** No, not always.

17 **Q.** And if there -- and what should be done before you
18 decide to give the increase to a customer like Rite Aid is
19 there should be some due diligence done on the part of
20 McKesson; true?

21 **A.** Yes.

22 **Q.** And that should be documented; true?

23 **A.** That was part of the process, yes.

24 **Q.** And I'd now like to show you what's been marked as
25 Exhibit P-12967.

1 **A.** Thank you.

2 MR. RAFFERTY: Oh, I'm sorry, Your Honor. I was
3 just reminded I did not move to admit Plaintiffs' 13288.

4 THE COURT: Any objection to that?

5 MR. SCHMIDT: No objection, Your Honor.

6 THE COURT: All right. 13288 is admitted.

7 MR. RAFFERTY: Thank you, Your Honor.

8 MR. SCHMIDT: We will object to this document on
9 geographic scope. It relates to pharmacies outside of
10 Huntington-Cabell.

11 MR. RAFFERTY: Your Honor, the discussion in this
12 is pertaining to the retail national accounts and, in
13 particular, the Rite Aid retail national account and how the
14 thresholds were set for Rite Aid and it was done not on a
15 company by -- a pharmacy by pharmacy basis, but on a
16 national basis.

17 THE COURT: Well, if --

18 MR. SCHMIDT: I'm sorry.

19 THE COURT: Go ahead, Mr. Schmidt.

20 MR. SCHMIDT: I was going to say, if you're only
21 asking about the Rite Aid part and it does -- I haven't
22 looked at if there's Rite Aid stuff in here. The subject of
23 this is CVS, which was not -- the CVS being discussed is not
24 in Huntington-Cabell. If you've got Rite Aid that's
25 general, then we don't object to that.

1 MR. RAFFERTY: May I approach opposing counsel?

2 MR. SCHMIDT: No, Your Honor.

3 (Laughter)

4 MR. SCHMIDT: We don't object to it for that
5 limited purpose. Thank you for -- for letting me know that,
6 Mr. Rafferty.

7 THE COURT: Okay. What is the limited purpose?

8 MR. RAFFERTY: It's to show how they set the
9 thresholds for Rite Aid nationally.

10 THE COURT: It comes in for that limited purpose
11 only.

12 You don't object? It comes in for that limited
13 purpose.

14 MR. RAFFERTY: Thank you, Your Honor.

15 I did pass this out, didn't I? Do you have a copy of
16 the document, Your Honor?

17 THE COURT: Yes.

18 MR. RAFFERTY: Okay. I couldn't remember if I
19 handed it out.

20 THE COURT: Right here.

21 BY MR. RAFFERTY:

22 Q. All right. If we go to the back, the second to last
23 page, Mr. Oriente, do you see there's an e-mail from Elaine
24 Thomet down at the bottom which, once again, in a strange
25 way, we have to read e-mail strings and you have to start

1 from the back, but this is Elaine Thomet. Who is Elaine
2 Thomet?

3 **A.** She worked in the retail national accounts, like
4 Customer Service Department.

5 **Q.** Did you -- so, you worked with her?

6 **A.** She was -- yeah. I guess you would say I worked with
7 her. I had interactions with her. She was a part of the --
8 on the customer service side of the business.

9 **Q.** Okay. I just want to look at that first sentence and
10 it says I would like to proactively ask to make the buffer
11 on CVS retail location 30 percent, same as you did for Rite
12 Aid. Do you see that?

13 **A.** Yes. That's what she wrote.

14 **Q.** Okay. And then if you go up a couple of e-mails up to
15 the top, it says Michael Oriente sent to Elaine on
16 July 22nd, 2008. I need Don -- I need to have Don -- and
17 would that be Don Walker?

18 **A.** Yes, it would be.

19 **Q.** Approve that CVS will be tweaked, in quotes, as Rite
20 Aid was. Do you see that?

21 **A.** Yes. I wrote that.

22 **Q.** And then in that -- when we talk about the buffer and
23 being tweaked to 30 percent, are you familiar with the
24 concept of a buffer in setting a threshold?

25 **A.** Yes, I am.

1 **Q.** Okay. And the buffer is the way the thresholds were
2 set for those retail national accounts under the CSMP was
3 McKesson would take the highest of the last 12 months sales
4 for that particular base code, correct?

5 **A.** Yes, that is correct.

6 **Q.** And then they would put a 30 percent buffer or
7 addition? They would add 30 percent to that number,
8 correct?

9 **A.** No, that's not correct.

10 **Q.** How much would they add?

11 **A.** The program buffer was ten percent.

12 **Q.** Okay. Does this indicate in this e-mail that the
13 program buffer for Rite Aid was 30 percent?

14 **A.** This is indicating that she is requesting that another
15 chain receive the 30 percent.

16 **Q.** And, specifically, what she says is just like you did
17 for Rite Aid?

18 **A.** Yes. Not all Rite Aids received the -- the additional
19 buffer. It was, as requested, we would review the Rite
20 Aids. It wasn't across the entire chain.

21 **Q.** And, in fact, for the ISMCs, for example, the
22 independent small-medium chains, in fact, there was a --
23 also a buffer put on there thresholds when it was initially
24 being set, correct?

25 **A.** Yes. That would be the ten percent buffer.

1 **Q.** Okay. And then, are you aware of how many of the Rite
2 Aid stores received the 30 percent buffer in 2008?

3 **A.** I do not recollect the exact count, no.

4 **Q.** Okay. But you were the one -- you were the one that
5 was making that decision to give the buffer, correct?

6 **A.** I would have been the one to review them. The decision
7 would have been, again, Don Walker's decision to permit me
8 to make those adjustments. I just don't recall back, what,
9 13 years ago how many adjustments I made.

10 **Q.** And in '08, just to put this in context, you're using
11 the highest of the last 12 months in terms of sales for that
12 base code, as we just discussed, right?

13 **A.** Yes. Thresholds were something new. Customers
14 experienced monthly fluctuations and variations in their
15 monthly ordering. And so, we went initially with the
16 highest of that 12 months.

17 **Q.** And that would have been 12 months dating back into the
18 '07 period, correct?

19 **A.** Yes. I believe it would have gone back into '07.

20 **Q.** And that was during the time period that McKesson was
21 entering into an agreement with the -- the Settlement
22 Agreement that we discussed earlier about violations of the
23 Controlled Substances Act; true?

24 MR. SCHMIDT: Object to characterization, Your
25 Honor.

1 THE COURT: Just a minute.

2 Overruled. He can answer it.

3 BY MR. RAFFERTY:

4 Q. You can answer.

5 A. I'm sorry. Okay. Could you ask the question again?

6 I'm sorry. I'm deaf in this one ear.

7 Q. Oh, no problem. No problem. I'm happy to.

8 That was during the time period, if you're going 12
9 months back from the start of the CSMP, that was in the time
10 period that there was the negotiation going on in terms of
11 the 2008 Settlement Agreement that we talked about earlier?

12 A. Yes. It would have covered part of that period.

13 Q. And did you ever have any discussions with some of your
14 --

15 MR. RAFFERTY: I was just reminded I did not move
16 this one in either, Judge. I'm sorry. Plaintiffs move in
17 P-12967.

18 MR. SCHMIDT: No objection, subject to limited
19 purpose that was covered with the witness.

20 THE COURT: Admitted for that purpose.

21 BY MR. RAFFERTY:

22 Q. Did you ever have conversations with other DRAs about
23 the fact that McKesson was setting thresholds too high?

24 A. I don't recall having conversations that they were too
25 high.

1 Q. I'd like to show you P-08309. Getting a lot of paper
2 today.

3 A. Thank you.

4 Q. If it starts stacking up, I can set some aside for you.

5 A. I'm fine. Thank you.

6 Q. Does this appear to be an e-mail dated August 31st,
7 2011 to -- from David Gustin and if you see the bcc down
8 below, do you see your name there?

9 A. Yes, I do.

10 Q. And I think we introduced who Dave Gustin was, but he's
11 a colleague of yours with -- a fellow DRA?

12 A. Yes, he was.

13 Q. Okay. And just to put a time period on it, during
14 2011, correct?

15 A. Yes, he would have been.

16 Q. Okay. And here, it says -- Dave Gustin is saying I
17 could use your help. I have thought of an area that needs
18 tightened up in CSMP and it is the number of accounts we
19 have that large gaps between the amount of Oxy or Hydro they
20 are allowed to buy --

21 COURT REPORTER: I'm sorry. What was that again?
22 I didn't get that.

23 BY MR. RAFFERTY:

24 Q. It is the number of accounts we have that have large
25 gaps between the amount of Oxy or Hydro they are allowed to

1 buy, their threshold, and the amount they really need for
2 current purchases. Do you see that?

3 MR. SCHMIDT: Your Honor, this one I need to
4 object to on geographic scope. Unless Mr. Rafferty can tell
5 me I'm wrong, I believe the accounts he's referring to which
6 are set forth at the end are all outside of
7 Huntington-Cabell. I see places in -- a hospital in Iowa,
8 things like that.

9 MR. RAFFERTY: Yes. And there are literally
10 hundreds of them, which describes, once again, how the
11 thresholds are being set on a nationwide basis, Your Honor.

12 THE COURT: I think it's relevant to how they're
13 set. I'll overrule it.

14 MR. RAFFERTY: Thank you, Your Honor.

15 MR. SCHMIDT: And, if I may say for the record,
16 what he's saying here is very clearly I'm focusing on
17 specific accounts.

18 MR. RAFFERTY: May I continue, Your Honor?

19 THE COURT: Yes.

20 MR. RAFFERTY: Thank you

21 BY MR. RAFFERTY:

22 Q. And then it says -- and this will be the last sentence
23 that I read. This increases the opportunity for diversion
24 by exposing more product for introduction into the pipeline
25 than may be being used for legitimate purposes. Do you see

1 that?

2 **A.** Yes. That's what Dave wrote.

3 **Q.** Okay. And did you have a conversation with Dave about
4 his thoughts in regards to the fact that thresholds were
5 being set too high?

6 **A.** I don't recall having conversation with him. I did
7 receive -- I was blind copied on this e-mail. I did not
8 feel that way in my region, no. I had the ability to lower
9 them as I saw fit.

10 **Q.** Okay. And I believe what you said, though, was that
11 Dave Gustin was actually over the Washington Court House
12 Distribution Center in 2011, correct?

13 **A.** Yes, he would have been.

14 **Q.** That serviced Cabell County?

15 **A.** Yes, it did.

16 **Q.** Thank you.

17 MR. RAFFERTY: Move it in. Move in P-08309, Your
18 Honor.

19 MR. SCHMIDT: We'll maintain our objection on that
20 document based on geographic scope.

21 THE COURT: All right. Subject to that objection,
22 it's admitted. It's admitted and the objection is shown on
23 the record.

24 MR. RAFFERTY: Thank you, Your Honor.

25 MR. SCHMIDT: Thank you, Your Honor.

1 BY MR. RAFFERTY:

2 Q. But, in fact, there wasn't -- thresholds weren't
3 reduced systematically by McKesson until almost four years
4 later in 2015; is that accurate?

5 A. Yes. On the systematic basis, that is correct.

6 Q. In fact, there was something referred to as the
7 threshold reduction effort; is that correct?

8 A. That was done -- yes. That would have been done like
9 in 2013, was a manual review of our customers.

10 Q. But the actual reduction initiative started in 2015; is
11 that true?

12 A. I would -- I would say that was when the systematic
13 process was started.

14 Q. Okay. If we could, let's look at P-08247.

15 A. Thank you.

16 Q. Are you there, sir?

17 A. Yes, I'm there.

18 Q. And this is a document dated February 9, 2015 and it is
19 from a Nate Hartle. Do you see that?

20 A. I do. I have not seen this document before this.

21 Q. Okay. Do you know at that time whether you were a RNA
22 Director of Regulatory Affairs?

23 A. Yes, I would have been.

24 Q. And who is the -- who is the -- what was Nate Hartle's
25 position?

1 **A.** He would have been my boss as Senior Director of
2 Regulatory Affairs.

3 **Q.** Okay. And is it your testimony that he never came to
4 you and showed you the threshold initiative reduction
5 initiative?

6 **A.** Yes. That is correct.

7 **Q.** Okay.

8 MR. RAFFERTY: Well, at this point, Your Honor, we
9 would still move this document in as P-08247. It's a
10 stipulated document with a sponsoring witness stipulation.

11 MR. SCHMIDT: And, Your Honor, pursuant to our
12 stipulation, no objection to moving it in.

13 THE COURT: It's admitted.

14 BY MR. RAFFERTY:

15 **Q.** Did you -- were you aware at that time -- setting the
16 document aside, were you aware at that time that, in fact,
17 the RNAs were going through that reduction initiative on
18 thresholds?

19 **A.** Yes. It was something Nate Hartle was undertaking
20 himself and doing the work. He was not letting me know that
21 they were being reduced.

22 **Q.** Did you know the amount of the threshold reductions
23 that were incurred by Rite Aid as a result of that
24 initiative?

25 **A.** I would have seen it on an individual basis. As I've

1 conducted my due diligence and would look at thresholds, I
2 would see like for a specific registrant, specific Rite Aid
3 store, that would have gone from, you know, X to Y. That's
4 how I would have seen it.

5 **Q.** Do you know whether it was millions of pills that would
6 have been reduced?

7 **A.** I don't know if it was that high.

8 **Q.** Let me now show you what's been marked at P-13211.

9 **A.** Thank you.

10 **Q.** And this document is dated just a year later, May 16th,
11 2016, very similar document to the one we just entered. And
12 do you see it says, once again, Nate Hartle is sending it;
13 is that correct?

14 **A.** Nate did not send this. Nate documented the process he
15 did and this would have gotten filed.

16 **Q.** Okay.

17 **A.** It's not an e-mail.

18 **Q.** Yes. It appears to be some type of memo; is that
19 correct?

20 **A.** Yes. It's him conducting documentation.

21 **Q.** Okay. And are you familiar then -- you see the chain
22 name Rite Aid, correct?

23 **A.** Yes.

24 **Q.** And you were still involved with Rite Aid in this
25 particular -- at this time?

1 **A.** Yes, I was.

2 **Q.** Okay. Are you familiar with this reduction initiative
3 and this reduction process by Mr. Hartle?

4 **A.** No, I wasn't. He did a lot of the review work himself
5 and this is another example of that.

6 **Q.** Okay.

7 MR. RAFFERTY: Your Honor, at this time, I would
8 move in P-13211 as part of the stipulated documents.

9 MR. SCHMIDT: No objection under the stipulation
10 under our agreement.

11 THE COURT: All right. It's admitted.

12 BY MR. RAFFERTY:

13 **Q.** Now I'd like to show you what's been marked as P-13212.

14 **A.** Thank you.

15 **Q.** Once again, this is -- I'm sorry. Are you there, sir?

16 **A.** Go ahead.

17 **Q.** Okay. I just wanted to make sure you were ready.

18 **A.** Thank you.

19 **Q.** If you were reviewing it, I didn't want to interrupt
20 you. This is dated again July 5th, 2017, so yet another
21 year later. Do you see that?

22 **A.** Yes, I do.

23 **Q.** Okay. And here it is -- once again, this -- well, this
24 is labeled Investigative Report. Do you see that?

25 **A.** I'm looking for it.

1 Q. Right at the -- right at the top under -- controlled.

2 A. Oh, okay. I'm sorry. Yes.

3 Q. That's all right. And from Nate Hartle again -- or by
4 Nate Hartle, I should say, and it says Report Re: Rite Aid
5 DD adjustments. Chain name, Rite Aid. Do you see that?

6 A. Yes.

7 Q. Okay. And are you aware that this threshold reduction
8 initiative went on yet again in 2017?

9 A. During this time, in 2017, Nate was doing these reviews
10 and adjustments. So, I would, again, learn about it after
11 the fact. So, I've not seen this document either.

12 MR. RAFFERTY: We will move this document,
13 P-13212, into evidence per the stipulation.

14 MR. SCHMIDT: No objection on those terms, Your
15 Honor.

16 THE COURT: It's admitted.

17 BY MR. RAFFERTY:

18 Q. Now, during the time that you were a DRA, Mr. Oriente,
19 there were -- were there discussions between you and other
20 DRAs between 2008 and 2013 pertaining to the fact that you
21 did not feel as though you had adequate resources to perform
22 your duties as a Director of Regulatory Affairs?

23 A. Yes. At certain times, the workload was heavy.

24 Q. And your fellow DRAs felt the same way, correct?

25 A. A couple of them did, yes.

1 Q. I want to show you what's been marked as P-13068.

2 A. Thank you.

3 Q. Would you like to review it first, sir?

4 A. Yes, please. Okay.

5 Q. Okay. This appears to be an e-mail string between you
6 and a couple of other DRAs; is that accurate?

7 A. Yes, it is.

8 Q. Okay. And this is dated June 30th, 2009, which would
9 be right around a year after the implementation of the CSMP?

10 A. Yes, roughly a year.

11 Q. And is this during the time period that they still had
12 the five DRAs covering the entire country?

13 A. Yes, it would have been.

14 Q. If we look at this, at the first e-mail, it's the first
15 e-mail that starts the string on the second page, sir.

16 A. Yes, sir.

17 Q. Michael Oriente, Tuesday, June 30th, 2009 to Dave
18 Gustin and Tom McDonald. I don't think we've introduced Tom
19 McDonald. Who is he?

20 A. Tom McDonald replaced Tracy Jonas as the West DRA.

21 Q. And you were telling them that I did them. Thanks.

22 Right now, I think I am in the eye of the storm. It beat me
23 up pretty good yesterday and I expect this afternoon to heat
24 up. Right now, I'm gathering my wits. How are you guys
25 doing? And this is June 30th, so this is the end of the

1 month, correct?

2 **A.** Yes, sir.

3 **Q.** So, what are you referring to there?

4 **A.** Yes. Towards the end of the month, since there was a
5 monthly threshold, customers would more than likely have
6 blocked orders the last week of the month. So, the last day
7 of June would have been a busy day for threshold change
8 reviews and that's what I'm referring to, that the 29th and
9 30th, I was, you know, busy for the entire day reviewing
10 customers.

11 **Q.** And doing TCRs, correct?

12 **A.** It would have involved reviewing TCRs, yes.

13 **Q.** Right, which is the threshold change requests from
14 customers?

15 **A.** Yes. Making a determination whether or not they should
16 be granted.

17 **Q.** Okay. And that's part of the due diligence obligation
18 of McKesson in regards to the CSMP, correct?

19 **A.** That is correct.

20 **Q.** Okay. And if you go up, Dave Gustin says back to you
21 and Mr. McDonald, I needed backup yesterday. I think I had
22 190 e-mails and did 80 increases, mostly from the south. Do
23 you see that?

24 **A.** Yes. Dave referenced mostly from the south. He would
25 have been covering from Bill Mahoney.

1 Q. Okay.

2 A. We covered for each other. Bill must have been out.

3 Q. That's actually what I was going to ask you. A lot of
4 time, because there were five of you, people had paid time
5 off, or were sick, or something else, and you all would
6 cover for each other on doing TCRs, correct?

7 A. Yes. We had backup.

8 Q. Okay. And here it says -- so, 80 increases, so 80
9 threshold increases were done on that day, according to Mr.
10 Gustin telling you, correct?

11 A. That's what Dave put here, yes.

12 Q. It says -- he goes on to say, that is not to whine, but
13 merely to note that it is not possible to be truly diligent
14 and still handle that kind of volume. Do you see that?

15 A. I see that.

16 Q. Okay.

17 A. That, again, is his opinion.

18 Q. He says I think I have a good system and am pretty
19 adept, but was hard-pressed to be thorough, error free and
20 on my game. Do you see that?

21 A. That's what he wrote, yes.

22 Q. Okay. And then you respond and say we need to think of
23 a solution as a group to the tsunami at the end of the
24 month. And is the tsunami that you're referring to the
25 tsunami of TCRs, threshold change requests?

1 **A.** Yes. It would be the amount of reviews that came in at
2 the end of the month.

3 MR. RAFFERTY: Plaintiffs would move in P-13068,
4 Your Honor.

5 MR. SCHMIDT: No objection under the terms of our
6 stipulation. Or no objection period, I'm sorry.

7 THE COURT: It will be admitted.

8 MR. RAFFERTY: Okay, thank you. I'm not used to
9 hearing that.

10 BY MR. RAFFERTY:

11 **Q.** I'm going to show you what's been marked as 08763.
12 Now, the last document we just looked at was in '09,
13 correct?

14 **A.** Yes.

15 **Q.** I want to show you an e-mail from 2011.

16 **A.** Thank you.

17 **Q.** And we'll skip the first couple of e-mails in the
18 string on the last page and the bottom of the second page
19 and start with the e-mail from Dave Gustin to you, Bill
20 Mahoney, Tom McDonald. That's -- that starts on the first
21 page -- I'm sorry. It starts on the first page down at the
22 bottom. Do you see that?

23 **A.** Bottom of the second page?

24 **Q.** Bottom of the -- I'm sorry. Let me -- it's bottom of
25 the second page. I'm sorry. Do you see it's dated

1 August 8th, 2011 at 12:09?

2 **A.** Yes, sir.

3 **Q.** Okay. And there, once again, Dave Gustin is talking
4 about his workload, correct?

5 **A.** Yes.

6 **Q.** He says I don't know about you, but I already am
7 starting to feel like I need a personal assistant. Since
8 that isn't happening anytime soon, I think we need to
9 cultivate and incorporate SF. What is SF?

10 **A.** SF is McKesson's abbreviation for service first. It
11 would be a customer service group in our, at that time,
12 Carrollton office in Texas.

13 **Q.** Okay. We need to cultivate and incorporate SF, or
14 service first, to do the mundane and time-consuming so we
15 can visit more customers, attend more events that develop
16 our contacts and knowledge and allow us to be more engaged
17 with the regions to increase our level of influence and
18 accountability. Am I wrong?

19 And then there is a response from Mr. Mahoney. And
20 then there is a further response from you. Do you see that
21 in the middle of Page 2?

22 **A.** Yes.

23 **Q.** Okay. And there, you describe how you're feeling about
24 your workload, correct?

25 **A.** Where I say I second that, I'm seconding what Bill

1 Mahoney wrote.

2 **Q.** Yeah, but I'm focused primarily, yes, really on the
3 next sentence and the one after that where you say often, it
4 has new doctor, new clinic -- well, let's just put it in
5 context because, you're right, you are saying I second that
6 to Mr. Mahoney's e-mail?

7 **A.** Right. The service -- what I'm commenting on is that
8 the service first does not always meet the requirements that
9 I need. So, that's why I'm seconding what Bill's comment
10 is, not Dave's.

11 **Q.** And Bill is saying using service first doesn't save the
12 DC or Distribution Center time because documentation is
13 insufficient. This is particularly true with customers who
14 may have high thresholds. Is that what he -- and then you
15 seconded that, correct?

16 **A.** Yes. I'm agreeing with Bill.

17 **Q.** And that's because, as we've talked about throughout
18 the day, documentation is a key part of the CSMP, correct?

19 **A.** Yes. Each of the DCs assisted the regulatory people in
20 gathering that information.

21 **Q.** Okay. And as you go on and say, and, yes, Dave, I am
22 overwhelmed. I feel that I am going down a river without a
23 paddle and fighting the rapids. Sooner or later, hopefully
24 later, I feel we will be burned by a customer that did not
25 get enough due diligence. I feel it is more of a when than

1 if we have a problem arise. Did I read that correctly?

2 **A.** Yes, you did.

3 **Q.** And the being burned by a customer without due
4 diligence, that's the main function? Due diligence is the
5 main function that you serve as a DRA in exercising your
6 responsibility into the CSMP, correct?

7 **A.** Yes. My point in writing that was that we could do our
8 diligence and review a customer and they be a fine customer,
9 and then they make a decision in their business, and they
10 end up doing something that they shouldn't be. And then,
11 they get, you know, caught and it comes back on the
12 wholesaler.

13 **Q.** Well, the due diligence that you're doing on TCRs, for
14 example, that was being discussed, is you're doing due
15 diligence to determine whether or not to grant that
16 threshold change request, true?

17 **A.** Yes, but a customer doing something that causes us to
18 terminate them may not have been involved any TCR.

19 **Q.** Well, but it includes a TCR. And it could, if you
20 don't do due diligence, or quality, or proper due diligence
21 and you grant a TCR, that can create a diversion, and that
22 can create a public health hazard; true?

23 MR. SCHMIDT: Objection, speculation and
24 foundation.

25 MR. RAFFERTY: This is his job.

1 THE COURT: Sustained.

2 MR. RAFFERTY: I'm just about to change topics, if
3 you would like to take a break, Your Honor.

4 THE COURT: Well, we're going until 5:30 today. I
5 would like to get in a few more minutes before we -- before
6 we do.

7 MR. RAFFERTY: Absolutely, Your Honor.

8 BY MR. RAFFERTY:

9 Q. So, would you agree with me that during your tenure as
10 a DRA and, particularly in the 2013 time period, threshold
11 increases were becoming almost automatic and automatically
12 granted by McKesson?

13 A. No. I wouldn't say they were automatic. The volume
14 increased. As -- as prescriptions rose, pharmacies saw more
15 prescriptions from prescribers. Therefore, pharmacies
16 ordered more product from what they previously had been.
17 So, therefore, they were reaching their threshold, needing
18 additional product. So, the number of threshold reviews
19 increased, but they weren't automatically just approved.

20 Q. Okay. Are you aware in 2013 of the enhancement of the
21 CSMP, some changes to the CSMP?

22 A. I'm not exactly sure what you mean by the enhancements.

23 Q. Okay. Well, let me show you what's been marked as
24 P-13737. Let me know once you have had a moment to review
25 it, sir?

1 **A.** Okay, thank you.

2 MR. RAFFERTY: While he's reviewing that, Your
3 Honor, I forgot to move in the last document, P-08763.

4 MR. SCHMIDT: No objection.

5 THE COURT: It's admitted.

6 THE WITNESS: Okay, thank you.

7 BY MR. RAFFERTY:

8 **Q.** Yep. This is an e-mail attaching a PowerPoint
9 presentation that appears to be from Mr. Don Walker, but
10 just to set the foundation, this is from Ellie Rio. Do you
11 know who Ellie Rio is?

12 **A.** Yes. She assisted Don.

13 **Q.** And this is to an awful lot of people that we won't
14 read through. I did highlight your name. So, about -- if
15 we could --

16 MR. RAFFERTY: Well, let's go ahead and move it
17 in, P-13737.

18 MR. SCHMIDT: No objection.

19 THE COURT: It's admitted.

20 BY MR. RAFFERTY:

21 **Q.** And then if you see --

22 **A.** Yeah, I found it.

23 **Q.** Okay. Just so you don't have to look for it. It took
24 me awhile to find it. And then if you go down, it says
25 subject, Reference Documents Northeast Suspicious Order

1 Monitoring Awareness Training. Do you see that?

2 **A.** Yes, I do.

3 **Q.** Okay. And then if you go to the next page, which is an
4 earlier e-mail, it's October 24th, 2013 from Ellie Rio again
5 and your name is right there, second line towards the end.

6 **A.** Yes.

7 **Q.** Okay. Suspicious -- and the subject, Suspicious Order
8 Monitoring Awareness Training. Do you see that?

9 **A.** Yes.

10 **Q.** And here it says it's from -- sent on behalf of Don
11 Walker. Do you recall this presentation, sir?

12 **A.** Do I recall --

13 **Q.** Do you recall this presentation?

14 **A.** Yes, I do.

15 **Q.** And it says, as you are aware, we are in the process of
16 -- I read too fast. As you are aware, we are in the process
17 of implementing an enhanced suspicious Order Monitoring
18 Program. Do you see that?

19 **A.** Yes, I do.

20 **Q.** Okay. As a pharmaceutical distributor, McKesson has a
21 responsibility to ensure pharmaceutical controlled
22 substances are not diverted for non-medical or other illegal
23 purposes. To that end, we are further enhancing our
24 controlled substance distribution policies and procedures.
25 Do you see that?

1 **A.** Yes, I do.

2 **Q.** Okay. And, really, what I want to ask you about now
3 that we've got that established is about the presentation.
4 And here it says one of the changes, on Page 7, sir --

5 MR. RAFFERTY: May I approach the screen?

6 BY MR. RAFFERTY:

7 **Q.** On Page 7, significant enhancements to CSMP. Do you
8 see that?

9 **A.** Yes, I do.

10 **Q.** And one of the things, the key enhancements underway,
11 more rigorous process for threshold change requests. Do you
12 see that?

13 **A.** Yes, I do.

14 **Q.** So, they're trying to -- so, McKesson, in 2013, is
15 trying to make -- make a more rigorous process for those
16 TCRs we talked about earlier; is that correct?

17 **A.** Yes.

18 **Q.** Okay. And it says changes are the exception, not rule.
19 Do you see that?

20 **A.** Yes.

21 **Q.** And the reason it had to be enhanced -- to your
22 understanding, the reason it had to be enhanced was because
23 changes, or the threshold changes, had become the rule, not
24 the -- not the exception, correct?

25 MR. SCHMIDT: Objection, foundation.

1 THE COURT: Overruled.

2 THE WITNESS: That's what's written here. That
3 really wasn't my understanding. I would review all TCRs
4 that came to me.

5 BY MR. RAFFERTY:

6 **Q.** This is what Mr. Walker is saying, right?

7 **A.** Yes.

8 MR. RAFFERTY: Okay. And we would move in
9 P-13737.

10 MR. SCHMIDT: No objection.

11 THE COURT: It's admitted.

12 BY MR. RAFFERTY:

13 **Q.** If I could see -- I'm now going to show you what's been
14 marked for purposes of identification, sir, as 42 --
15 P-42796.

16 **A.** Thank you.

17 MR. SCHMIDT: And in an effort to move this along,
18 I'll object to this one as not related to Huntington-Cabell.
19 It's stores outside of Huntington-Cabell.

20 MR. RAFFERTY: Once again, Your Honor, this is
21 discussing how thresholds are being set in retail national
22 accounts.

23 THE COURT: Yes. I will overrule the objection.

24 MR. RAFFERTY: Thank you.

25 MR. SCHMIDT: Just so I state for the record, it's

1 thresholds for an account that was not present in
2 Huntington-Cabell at this time.

3 THE COURT: Okay.

4 MR. RAFFERTY: I'm sorry, Your Honor. May I
5 proceed?

6 THE COURT: Yes, you may.

7 MR. RAFFERTY: Thank you.

8 BY MR. RAFFERTY:

9 **Q.** Mr. Oriente, this is an e-mail dated --

10 MR. RAFFERTY: Well, I guess I should just go
11 ahead and admit it, P-42796.

12 MR. SCHMIDT: We'll maintain our objection, Your
13 Honor.

14 THE COURT: All right. It's admitted subject to
15 the objection.

16 MR. RAFFERTY: Thank you, Your Honor.

17 BY MR. RAFFERTY:

18 **Q.** This e-mail from you, the top of it, is to Dave Gustin
19 and we've talked a lot about Dave Gustin. October, 2008.
20 Do you see that?

21 **A.** Yes, I do.

22 **Q.** Okay. And if we go back and start from the beginning
23 here, there is a Stephen Schmidt. Who is Stephen Schmidt?
24 And this is on -- I'm sorry. This is on Page 3, Mr.
25 Oriente.

1 **A.** He worked in the RNA group. I believe he was an
2 account manager for McKesson.

3 **Q.** And it says, Michael, please see attached TCR form for
4 today's CVS stores over the 80 percent threshold. Do you
5 see that?

6 **A.** Yes, I do.

7 **Q.** And then, if you flip to Page 2, it says, today's --
8 from you to Tracy Jonas and others, including Dave Gustin,
9 today's CVS CSMP threshold adjustments for review. Dave,
10 can you do Bill's five, as he is on PTO; is that time off?

11 **A.** Yes, it is.

12 **Q.** And this is when you all cover for each, as we've
13 discussed?

14 **A.** That is correct.

15 THE COURT: Let me say something for the record.
16 It seems to me that the geographic scope objection isn't
17 really appropriate here because we're talking about policies
18 that go across the -- all of McKesson, which would embrace
19 the Huntington-Cabell area, to some extent.

20 MR. RAFFERTY: Yes, Your Honor.

21 THE COURT: Do you want to respond?

22 MR. SCHMIDT: Yeah. And that was the reason for
23 our objection. I don't think that's accurate. They do have
24 Rite Aid documents. They did use a Rite Aid document. CVS
25 is a different account and they were handled on an account

1 by account basis. And there's no CVS in Huntington-Cabell
2 this point, at least for McKesson.

3 THE COURT: All right. Go ahead, Mr. Rafferty.

4 MR. RAFFERTY: Thank you. Thank you, Your Honor.

5 BY MR. RAFFERTY:

6 Q. And then it says -- up at the top, there is an e-mail
7 to other people, Jon Cox, and then you're copied on this
8 CSMP threshold report dated -- and it's dated October 16th,
9 '08. That's the bottom e-mail on the first page, sir; do
10 you see that?

11 A. Yes. From Dave Gustin, yes.

12 Q. Yes. It says regulatory team, something needs to be
13 addressed. All of these, I believe, had already gotten
14 increases in the past week. One was done yesterday. We are
15 giving a lot of automatic increases that would not fly for
16 the independent retailers without level twos. Is he -- is
17 he -- well, is it your understanding that he was referring
18 to the level two review in the CSMP?

19 A. Yes, he was.

20 Q. And at least Mr. Gustin was referring to them as
21 automatic increases, correct?

22 A. Yeah. He referenced the automatic increase and he
23 wrote we. I would not classify mine as automatic.

24 Q. Okay. Okay. But, once again, just to orient things,
25 Dave Gustin was, at that time, in 2008, over the Washington

1 Court House Distribution Center, which did service Cabell
2 County, correct?

3 **A.** Yes, for the independence in that county.

4 **Q.** And then he says can we not make substantial enough
5 increases to prevent daily changes of thresholds? Do you
6 see that?

7 **A.** Yes, I see that.

8 **Q.** So, one way, would you agree with me, sir, in your role
9 as DRA, one way of not having as many TCRs processed at the
10 end of every month is to increase the thresholds so high
11 that the customer never bumps up against them and that's --
12 well, let me leave the question there.

13 **A.** This is about six months into the program and
14 thresholds were something that was brand new, so they were
15 being adjusted. Also, as I stated earlier, as the amount of
16 prescriptions being written by prescribers increased,
17 thresholds would follow that and mirror that as pharmacies
18 would require more product.

19 MR. RAFFERTY: Your Honor, I hate to do it, but I
20 would move to strike that as unresponsive. I don't think
21 that answered my question. I was asking about one way to
22 decrease the amount of TCRs at the end of the month was to
23 set the threshold so high that they never bumped up against
24 it.

25 MR. SCHMIDT: Your Honor, I think he was answering

1 the question and trying to explain. He's been a remarkably
2 responsive witness.

3 THE COURT: I'm going to deny the motion to
4 strike.

5 BY MR. RAFFERTY:

6 **Q.** If you set the threshold too high, as Mr. Gustin was
7 talking about, then you cut down the number of TCRs at the
8 end of the month, true?

9 **A.** If the threshold was set way above purchasing then,
10 yes, you would not get a threshold change request.

11 MR. RAFFERTY: At this time, Your Honor, we would
12 move in 42796.

13 MR. SCHMIDT: You didn't move it in before? I
14 thought you moved it in right away. But either way --

15 MR. RAFFERTY: I can't keep track.

16 MR. SCHMIDT: We maintain our objection and I
17 suspect it's overruled.

18 THE COURT: All right. Did you object to it, Mr.
19 Schmidt?

20 MR. SCHMIDT: I did.

21 MR. RAFFERTY: You overruled it.

22 THE COURT: On the geographic scope ground?

23 MR. SCHMIDT: Yes, Your Honor.

24 THE COURT: All right. That objection is
25 overruled and it's admitted.

1 MR. RAFFERTY: Thank you, Your Honor.

2 BY MR. RAFFERTY:

3 Q. I'm now handing you what's been marked for purposes of
4 identification, sir, as P-12778.

5 A. Thank you.

6 Q. Have you had a chance to review it, sir?

7 A. Yes, sir.

8 Q. Okay. This is an e-mail from Dave Gustin to, once
9 again, a number of people, but down -- luckily for us, down
10 at the cc line is where your name appears. Do you see that?

11 A. Yes, I do.

12 Q. Okay. And the date is July 26th, 2010, correct?

13 A. Yes.

14 Q. First, let me ask you this. Is it ever appropriate
15 when processing a TCR to grant more than the customer is
16 asking for?

17 A. I don't believe there was a restriction in setting the
18 threshold for a customer.

19 Q. So, if a customer asked for a thousand threshold change
20 increase, you could just increase it by 7- or 8,000?

21 A. Not necessarily, but if a customer asks asking for a
22 thousand, you know, if we -- in our due diligence of that
23 customer, we felt that, you know, a permissible amount was
24 slightly higher than that, we could put that in. I know,
25 myself, I put in what the customer asked for only.

1 Q. You believe that's a better practice as a DRA?

2 A. That's the way I interpreted the operating manual, yes.

3 Q. So, you would believe it would be consistent with the
4 CSMP to grant the request of the customer at the level they
5 requested?

6 A. Yes. The way I understood it.

7 Q. If we could take a look at P-12778. And down here, an
8 e-mail to you and many others from Mr. Gustin in 2010 says
9 there's an important aspect to this that had been overlooked
10 and that is to always restore the customer's buffer when we
11 put the TCR in. If service first passes along that the
12 customer wants 3,000 more doses of something, we need to
13 realize that there is a good chance they are seeking what
14 they think they need, not what they need plus ten percent
15 rounded up. Do you see that?

16 A. That is what Dave wrote here, yes.

17 Q. So, please remember to adjust their request by ten
18 percent rounded up before filling out the SharePoint TCR and
19 include in your comments that the buffer has been added.
20 So, then he gives an example. I.e., the customer thinks
21 that they will need 11,000 doses of Oxy. The TCR request
22 would be for 11,000 plus another 1,100 oxycodone, correct?

23 A. Yes, that's what Dave wrote here.

24 Q. Rounded up to the highest thousands or, in this case
25 13,000. That will help us tremendously to avoid repeated

1 omits in the future and lighten the workload in terms of
2 calls and reports, not to mention reduce the nuisance factor
3 for our customers. Do you see that?

4 **A.** Yes. That was Dave's interpretation.

5 **Q.** And you disagree that that's the appropriate thing to
6 do under the CSMP?

7 **A.** I did not do that in my region, continue to add the
8 buffer. The buffer was assigned a ten-percent buffer when
9 thresholds were first established, but because of the
10 variability in purchasing, I could see, you know, Dave's,
11 you know, doing that in his region, that he wanted it that
12 way.

13 **Q.** And that's -- and so, what you could end up doing, if
14 you ended up doing that with every customer McKesson had,
15 you're talking about adding ten percent -- for example, just
16 taking oxycodone, if Mr. Gustin was doing that, that would
17 add thresholds, millions of pills of oxycodone to
18 thresholds, correct?

19 MR. SCHMIDT: Objection, foundation.

20 THE COURT: I will sustain the objection.

21 You can try it again, Mr. Rafferty.

22 BY MR. RAFFERTY:

23 **Q.** Do you know how many customers David Gustin was
24 servicing?

25 **A.** I do not.

1 **Q.** Once again, do you know how many customers he was
2 servicing in Cabell County?

3 **A.** I do not. It wasn't my area of the country.

4 MR. RAFFERTY: Plaintiffs move in 12778, Your
5 Honor.

6 MR. SCHMIDT: No objection.

7 THE COURT: All right. 12778 is admitted.

8 Maybe this would be good time to take a little timeout,
9 Mr. Rafferty.

10 MR. RAFFERTY: Okay. Sure, Your Honor.

11 THE COURT: Let's be in recess until about 3:30.

12 (Recess taken)

13 (Proceedings resumed at 3:31 as follows:)

14 THE COURT: All right, Mr. Rafferty.

15 MR. RAFFERTY: Thank you, Your Honor.

16 BY MR. RAFFERTY:

17 **Q.** Mr. Oriente, I want to focus on the thresholds in
18 particular to Rite-Aid, your customer. Okay?

19 **A.** Yes.

20 **Q.** Okay. So would you agree that McKesson in terms of
21 thresholds or Threshold Change Requests has been more
22 deferential to the RNA accounts than they are to the smaller
23 ISMC accounts?

24 **A.** What do you mean by deferential? Just that they're
25 different?

1 Q. Well, we'll start with that. You treat them
2 differently under the CSMP; correct?

3 A. Yes, we treat them differently because the retail
4 national accounts have their own regulatory teams that would
5 oversee their stores, whereas on the independent side there
6 is not that regulatory team.

7 Q. And you don't do any review of the individual store in
8 terms of the TCR; correct?

9 A. No, that's not correct.

10 Q. Okay. If you did do any review of a particular RNA
11 account such as Rite-Aid, that should be documented in
12 writing; correct?

13 A. There would be some documentation done. Some was
14 electronic captured. But, yes, there would be documentation
15 through emails and such that a TCR was conducted.

16 Q. Primarily what you would do is communicate specifically
17 with headquarters as compared to the local store?

18 A. It would go from the local store to the chain
19 corporation. They would review it through their regulatory
20 team. And they would then send it on to McKesson for review
21 by myself, yes.

22 Q. All right. I would like to -- at some point did you
23 agree -- or McKesson -- I'm sorry. Did McKesson agree to
24 grant a 50 percent increase for all CII controlled
25 substances for each Rite-Aid store?

1 **A.** That agreement was reached with McKesson and Rite-Aid
2 by my boss, Don Walker, that if Rite-Aid would request a CII
3 review at a store, a or TCR, we were permitted to review it
4 and then make our decision. It didn't -- it wasn't a
5 blanket increase every Rite-Aid. It was when they requested
6 it, we would review that.

7 **Q.** Okay. It's your testimony it was not an automatic
8 increase?

9 **A.** Not for all 5,000 Rite-Aids, no.

10 **Q.** I'd like to show you P-22936. And have you had a
11 chance to --

12 **A.** Yes, I see the document.

13 **Q.** I understand it's a big document. I'm going to point
14 you to just one particular page, but you're free to look at
15 anything you like. Okay?

16 **A.** Fine.

17 **Q.** So this is -- it says on the cover page "Rite-Aid All."
18 Do you see that?

19 **A.** Yes. That's what's typed on this, "Rite-Aid All."

20 **Q.** Okay. And I'll represent to you this was produced to
21 us as the paper diligence file for Rite-Aid.

22 MR. SCHMIDT: Your Honor, we object to that
23 representation. This refers to specific Rite-Aid stores,
24 none of which are in Huntington/Cabell.

25 THE COURT: All right. I'll sustain the

1 objection.

2 MR. RAFFERTY: Well, if we could, can we move
3 to -- I think I can lay a foundation that this pertains to
4 --

5 THE COURT: All right. Go ahead.

6 BY MR. RAFFERTY:

7 Q. If we go to Page 19, Mr. Oriente, --

8 A. Yes.

9 Q. Okay. And it says McKesson Corporate at the top. It
10 says Threshold Change Form. Do you see that?

11 A. I do.

12 Q. And it's August 14th, '08. Correct?

13 A. Yes.

14 Q. And down below on the regulatory signature there's
15 Michael Oriente. Do you see that?

16 A. Yes, I do.

17 MR. SCHMIDT: Your Honor, I'll object to this on
18 the same basis. The store that's being discussed is in Camp
19 Hill, Pennsylvania.

20 BY MR. RAFFERTY:

21 Q. If you look at it, it says "Customer --"

22 THE COURT: How is a store in Pennsylvania --

23 MR. RAFFERTY: Because if you look at the thing,
24 it says "Customer Account All."

25 This is pertaining to all -- this is the -- this is all

1 Rite-Aids. And, in fact, the next document I'm going to
2 show is going to show that --

3 THE COURT: I'll overrule the objection and see
4 where you're going with this. Go ahead.

5 BY MR. RAFFERTY:

6 Q. Is that your signature down at the bottom left?

7 A. Yes. This would have been for stores serviced by the
8 New Castle distribution center. That's where Blaine Snyder
9 was the DC manager at.

10 Q. And --

11 MR. SCHMIDT: Your Honor, I'll note that proves
12 the point. That distribution center did not distribute to
13 Huntington/Cabell.

14 THE COURT: How is this relevant to --

15 MR. RAFFERTY: With all due respect to defense
16 counsel, there is -- this is an all -- all across the board.
17 And, in fact, the Cabell County -- and I will go there
18 next -- showing three out of the four Rite-Aids in Cabell
19 County got the 50 percent auto increase. And this is the
20 TCR that it's relying upon.

21 THE COURT: Well, how does this relate to Cabell
22 County?

23 MR. RAFFERTY: Because of the "all," there's no
24 other forms that show the 50 percent increase, but the
25 Cabell County Rite-Aids got the 50 percent increase, three

1 out of the four.

2 MR. SCHMIDT: Your Honor, the form they're using
3 is a pre-filled form that says "all" when they enter a
4 Rite-Aid. It's for specific pharmacies.

5 And I think what's happening here is this was a file
6 produced by one distribution center. The argument that's
7 being made is if 10, 15 years later we don't have similar
8 files for other distribution centers, they didn't exist and
9 that's just not true.

10 MR. RAFFERTY: I think that makes the point. This
11 is a pre-filled form saying "all" with a 50 percent increase
12 of all CIIs.

13 MR. SCHMIDT: At one Rite-Aid in Pennsylvania.

14 THE COURT: I'm going to sustain the objection,
15 Mr. Rafferty.

16 MR. RAFFERTY: For the record, that is, we would
17 proffer, P-22936 which is the Rite-Aid Threshold Change
18 Request form.

19 MR. SCHMIDT: We object to moving in those
20 Threshold Change Request forms for pharmacies outside of
21 Huntington/Cabell.

22 THE COURT: Objection sustained.

23 MR. RAFFERTY: If I could have just one moment.

24 THE COURT: Yes.

25 MR. RAFFERTY: Thank you.

1 (Pause)

2 MR. RAFFERTY: Your Honor, I'm being informed by
3 my learned partner that, in fact, the Camp Hill address is
4 the Rite-Aid corporation headquarters. And it would --
5 Chain 252 is all of the Rite-Aids. It's not reflected to
6 one particular Rite-Aid store. It's talking about the
7 chain. And there are four Rite-Aids in Cabell County.

8 MR. SCHMIDT: Which page are you looking at?

9 MR. RAFFERTY: 19. Do you have the right
10 document?

11 MR. SCHMIDT: I do. No, I don't actually. If
12 you're talking about -- yes.

13 THE COURT: Are you still in 22936?

14 MR. RAFFERTY: We are still in --

15 MR. SCHMIDT: I don't think that changes that this
16 one specific Rite-Aid, not a global change. And I think
17 that's documented by the fact that there are other
18 individual Rite-Aids covered in here in other locations like
19 Ohio and places like that.

20 MR. RAFFERTY: May I ask the witness a question?

21 THE COURT: Yes.

22 BY MR. RAFFERTY:

23 **Q.** Do you know where the Rite-Aid headquarters are,
24 Mr. Oriente?

25 **A.** Yes.

1 Q. Where are they?

2 A. It's located in Pennsylvania.

3 Q. Camp Hill?

4 A. Yes.

5 Q. Thank you.

6 THE COURT: Well, what page --

7 MR. RAFFERTY: Page 19 if we could pull it up just
8 for illustrative purposes so you can orient yourself, Your
9 Honor.

10 THE COURT: So your argument is because this is
11 addressed to the Rite-Aid headquarters and it says "all," it
12 covers all Rite-Aids?

13 MR. RAFFERTY: It does, Your Honor. It absolutely
14 positively does.

15 THE COURT: Like 5,000 of them or something?

16 MR. RAFFERTY: 4,600 plus, Your Honor.

17 THE COURT: And two or three of them are in
18 Huntington?

19 MR. RAFFERTY: Four of them. And three of the
20 four got the 50 percent increase, which is a very large
21 increase.

22 THE COURT: So this is proof that the Rite-Aids in
23 Huntington got 50 percent increase --

24 MR. RAFFERTY: The document I'm going to show next
25 is going to show that three out of the four got that

1 50 percent.

2 THE COURT: In August of 2008?

3 MR. SCHMIDT: Which actually refutes the point of
4 this document. If it's only three out of the four, that's
5 not all Rite-Aids.

6 MR. RAFFERTY: If I can explain what happened,
7 Your Honor.

8 THE COURT: Yes, sir. Go ahead.

9 MR. RAFFERTY: So what happened is they put in the
10 "all" and then only a number of them, several of them,
11 hundreds, whatever, thousands got it. And then what
12 happened is they went back and said, "Do you want increases
13 on the ones that hadn't gotten it yet?" And Rite-Aid said,
14 "Yes."

15 And then they looked back at the threshold change to
16 show that the three out of four Cabell County ones got the
17 50 percent increase.

18 THE COURT: Well, for what it's worth, if you want
19 to make this one page as a separate exhibit, I'll admit it.

20 MR. RAFFERTY: Okay. That's fine.

21 THE COURT: The rest of it I'll sustain the
22 objection to.

23 MR. RAFFERTY: We will modify this as we did the
24 Boggs PowerPoint and make this P-22936A.

25 THE COURT: All right. It's admitted subject to

1 Mr. Schmidt's objection.

2 MR. SCHMIDT: Thank you, Your Honor.

3 MR. RAFFERTY: Thank you, Your Honor.

4 BY MR. RAFFERTY:

5 Q. And then it goes "Reason for Change." Do you see
6 that?

7 A. What -- are you still on Page 19?

8 Q. Yes, sir.

9 A. Okay.

10 Q. Okay, on the TCR. And it says the reason for the
11 change is that Rite-Aid Corporation has a DEA monitoring
12 program in place at the corporate level that includes their
13 loss prevention department. As a result, Rite-Aid
14 Corporation and McKesson agreed to increase all CII base
15 codes by 50 percent.

16 Do you see that?

17 A. Yes, when they were requested.

18 Q. Okay. And, in fact, the, the fact that DEA -- or, I'm
19 sorry. Let me strike that. The fact that a customer, a
20 pharmacy of McKesson's has its DEA license, and even though
21 they have a DEA monitoring program in place is not a
22 sufficient reason to grant a blanket increase. Correct?

23 A. The increase would have been reviewed -- I know on some
24 of the Cabell County ones they were set at base levels, the
25 lowest level before they were increased.

1 Q. So you do know that Cabell County Rite-Aids got the
2 50 percent increase; correct?

3 A. I know of one that I recall.

4 Q. So as we sit here today, it's your testimony that you
5 know one Cabell County Rite-Aid got a 50 percent increase
6 for all CIIs. True?

7 A. No, not for all CIIs, no.

8 Q. For what then?

9 A. For a specific CII that they would have requested. And
10 this, this document does not cover those stores. This
11 document is pertaining to Rite-Aid stores serviced out of
12 the New Castle DC.

13 Q. And where does it say that on there?

14 A. I know because the DC manager, Blaine Snyder, was over
15 the New Castle distribution center only.

16 Q. Do you know whether or not the Cabell County Rite-Aids
17 got the 50 percent increase that is discussed here, sir?

18 A. Not on this document, no.

19 Q. Okay. Let me show you what's been marked for
20 identification purposes as P-42728.

21 MR. SCHMIDT: Your Honor, we'll move to strike
22 this exhibit given the witness's testimony that took away
23 the predicate under which it was admitted.

24 THE COURT: Right. He said it doesn't show an
25 increase in Cabell County or Huntington.

1 MR. RAFFERTY: This is a different document, Your
2 Honor.

3 THE COURT: Well, what about the one that I let in
4 and now based on his testimony he's saying that it's not,
5 not relevant to the point you're trying to make?

6 MR. RAFFERTY: But we believe it is. And we
7 believe that is what the TCR was used as an automatic
8 increase across Rite-Aid, and we can show that those
9 50 percent increases were given --

10 THE COURT: Well, if I understood his testimony,
11 he said it didn't show a 50 percent increase for Huntington
12 and Cabell County.

13 MR. RAFFERTY: He said he thought he saw one, but
14 we have three.

15 THE COURT: Well, let me ask you --

16 THE WITNESS: Yes, sir.

17 THE COURT: -- does this document show a
18 50 percent increase for the Rite-Aid stores in Huntington,
19 Cabell County?

20 THE WITNESS: It does not, sir.

21 THE COURT: I'm going to grant the motion to
22 strike it and I'll reverse my ruling admitting it and it's
23 out.

24 BY MR. RAFFERTY:

25 Q. Let me show you now what's been marked as

1 Plaintiffs' Exhibit --

2 THE COURT: If you can get it in through another
3 witness or some other way, Mr. Rafferty, I'll consider it.
4 But based on this witness's testimony, it doesn't prove
5 anything --

6 MR. RAFFERTY: Thank you, Your Honor.

7 THE COURT: -- related to Huntington and Cabell
8 County.

9 THE WITNESS: Yes, sir.

10 BY MR. RAFFERTY:

11 **Q.** I'm going to show you what's been marked as Exhibit
12 P-42728.

13 **A.** Thank you.

14 MR. SCHMIDT: Your Honor, this is a purported 1006
15 summary that we believe has at least one inaccuracy in it,
16 and then does not fully report the data purportedly being
17 summarized. And I can give detail if that would help.

18 THE COURT: Well, that would be a matter for
19 cross-examination, wouldn't it, Mr. Schmidt?

20 MR. SCHMIDT: No, I don't think a 1006 summary, a
21 lawyer-prepared document, can come into evidence if it
22 doesn't have a foundation with the witness.

23 THE COURT: All right. Well, let's see if Mr.
24 Rafferty can clear up your problem.

25 BY MR. RAFFERTY:

1 Q. Are you familiar, Mr. --

2 MR. RAFFERTY: I'm sorry, Your Honor. I
3 thought -- may I proceed?

4 THE COURT: Yes.

5 BY MR. RAFFERTY:

6 Q. Okay. Mr. Oriente, are you familiar with threshold
7 reports?

8 A. Yes, I am.

9 Q. And looking at this particular threshold report, do you
10 recognize this as a threshold report?

11 A. I, I don't recognize this as, as a report I would have
12 run. The information on here is similar to what our report
13 would show. This -- I don't recognize this as one we would
14 have run.

15 Q. Okay. And, in fact, this was a print-out of the
16 Threshold Change Report from McKesson regarding these
17 particular Rite-Aids in Cabell County. Do you see --

18 MR. SCHMIDT: I apologize.

19 THE COURT: Go ahead, Mr. Schmidt.

20 MR. SCHMIDT: I'll object to that representation.
21 I think what happened is there was a print-out that Mr.
22 Rafferty is referencing and some of the descriptions
23 changed, as I understand it, through that print-out. But
24 then there were also omissions of some of the data. So we
25 kind of have cherry-picking of hydrocodone for some,

1 oxycodone for others.

2 THE COURT: Well, the witness said he didn't
3 recognize it as a report, quote, we would have run.

4 MR. RAFFERTY: For the record, this is derived
5 from what is Bates number MCK-MDL-01391128 which is the West
6 Virginia Customer Threshold History Reports that were
7 produced to us from McKesson.

8 These reports are comprised of close to 90,000 rows of
9 data. This exhibit is simply oxycodone and hydrocodone
10 threshold histories for the Rite-Aid stores in Cabell
11 County.

12 Instead of putting in 90,000 lines of entries, we
13 simply, because it was produced in native format, narrowed
14 it down to the specific pharmacies in Cabell County, the
15 Rite-Aid pharmacies in Cabell County.

16 We have to use this, Your Honor, because there have
17 been no TCRs or diligence files related to these threshold
18 increases. This is the, this is the only information we
19 have showing these increases. It was produced from an Excel
20 spreadsheet that they produced.

21 MR. SCHMIDT: We don't take issue with the fact
22 that they attempted to produce this from one of our
23 spreadsheets. And I tried to say that in my prior answer.

24 The place where we take issue is in doing so, they seem
25 to have corrupted at least some of the descriptions on the

1 first page of the products. And then they've also
2 selectively picked thresholds for these pharmacies. It's an
3 incomplete production. And if it was going to come in, it
4 should be a complete history.

5 THE COURT: What about that, Mr. Rafferty?

6 MR. RAFFERTY: Your Honor, if I may indulge the
7 Court's patience for a second, my partner is the one that
8 pulled this. And I don't want to misrepresent anything to
9 Your Honor about how this was created, so Mr. Brandon Bogle.

10 MR. BOGLE: Your Honor, Brandon Bogle.

11 I think I can summarize this fairly briefly. And I'm
12 the one who created it, so I think I can speak to this
13 issue.

14 All I did was take the oxycodone threshold histories
15 produced to us by McKesson and authenticated, I might add,
16 in this case for the Cabell County specific stores, Rite-Aid
17 stores, again trying to make sure we didn't produce
18 thousands and thousands of pages of data here.

19 The first page that indicates the 9143 base code, which
20 is oxycodone, but then has different descriptions was
21 confirmed by separate McKesson counsel not in this courtroom
22 to be an error in the way the data was put together by
23 McKesson, not any change made by us.

24 And if you see every page thereafter, the short
25 descriptions match perfectly to the base codes. So this is

1 not a manipulation by data from us. In fact, if McKesson
2 goes back and looks at this data and spreadsheet they
3 produced, this the same way that it looks.

4 MR. SCHMIDT: That's not my understanding. I
5 appreciate that representation. I'm not trying to quibble.
6 It's not my understanding of the description being wrong in
7 the original spreadsheet, but that doesn't address the
8 separate point which is there needs to be a sponsoring
9 witness for this.

10 And that sponsoring witness would have the opportunity
11 to point out that there's data missing from here that for
12 some stores they focused on oxy because that makes a point,
13 for others they've ignored oxy and focused on hydro.

14 MR. BOGLE: Your Honor, I think we're perfectly
15 willing and able to focus on the Rite-Aid stores in Cabell
16 County since this case involves Cabell County itself. And
17 the fact that we chose oxycodone and hydrocodone is
18 consistent with our presentation of this case from the
19 outset.

20 And I might note as well that for the majority of these
21 increases, Mr. Oriente's initials actually appear next to
22 them.

23 MR. SCHMIDT: Whether or not kind of
24 cherry-picking the data presented is consistent with the
25 case presentation from the outset, it's not fair to the

1 witness when the witness, I don't think, can even
2 authenticate it.

3 MR. RAFFERTY: Authentication --

4 THE COURT: I'm sorry. Go ahead.

5 MR. SCHMIDT: I used "authentication." I mean
6 give a foundation.

7 MR. RAFFERTY: I believe, as Mr. Bogle said, his
8 initials are on these.

9 MR. BOGLE: Your Honor, this is actually, I
10 believe, on the stipulation regarding authentication and
11 presenting a witness.

12 MR. SCHMIDT: I think the underlying document --
13 underlying document, as I understand it, cures the two
14 issues I raised. It has the complete data. It's not
15 cherry-picked and I thought had the correct descriptions.
16 But if you have it there in front of you and I'm wrong on
17 that, then I'll just stand on the first point.

18 MR. BOGLE: If the Court would prefer that we put
19 in thousands and thousands of pages of data instead of
20 trying to cut to the point with the Cabell County
21 pharmacies, then that's something we can try to print out.
22 It's going to take a long time.

23 MR. SCHMIDT: We're willing to work with you on
24 coming up with a proper 1006 that we can stipulate to. I
25 don't think this form is proper with this witness.

1 THE COURT: Well, I'm going to sustain the
2 objection to this one at this point, but I don't want to cut
3 you off from introducing that data if you can get it in,
4 figure out a right way to get it in.

5 MR. RAFFERTY: Yes, Your Honor. We'll endeavor to
6 do so and we'll try to work with Mr. Schmidt and get it into
7 a form that we can submit to the Court. Thank you.

8 THE COURT: Okay.

9 MR. RAFFERTY: One moment, Your Honor.

10 BY MR. RAFFERTY:

11 Q. Okay. I'm going to show you now what's been marked
12 as P-12971.

13 A. Thank you.

14 Q. Uh-huh. Do you see this email from Mr. Palmer to you,
15 Mr. Oriente?

16 A. Yes, I do.

17 Q. And this is a -- if you go down to the bottom email,
18 the bottom of the first page, it starts the chain off with
19 an email from Melissa Evangelista to Michael Oriente. Do
20 you see that?

21 A. Yes.

22 Q. And I say Michael Oriente. And to several other people
23 as well?

24 A. Yes.

25 Q. And she says, "Andy, please see the attached daily CSMP

1 report. Let me know if we need to make adjustments to the
2 current thresholds. Per your request, I've submitted the
3 request to increase stores 50 percent of their hydrocodone
4 threshold if they reached 90 percent or higher."

5 Do you see that?

6 **A.** Yes, I do.

7 **Q.** Okay. And then she asks you -- and this is now at
8 11:10 a.m. on that same day -- "Will you input the request
9 this morning so the stores can place an order this
10 afternoon?"

11 And then at 12:09 you say, "All the stores that were on
12 hydrocodone list at 90 percent and above have been increased
13 and can now place an order."

14 You say that to Andrew Palmer, and Andrew Palmer says,
15 "Thanks."

16 Do you see that?

17 **A.** Yes, I do.

18 **Q.** So the request was at 10:49 and by 12:09 that same day
19 those increases had been added. Correct?

20 MR. SCHMIDT: I think, again, this is referring to
21 stores outside of Huntington/Cabell unless they lay that
22 foundation, Your Honor.

23 MR. RAFFERTY: The policies as to Rite-Aid, Your
24 Honor, are relevant since they have national CSMP policies
25 and --

1 THE COURT: Well, ask him what it applies to.

2 BY MR. RAFFERTY:

3 Q. Mr. Oriente, what does this -- do you recall this?

4 A. Not this individual email, no.

5 Q. Okay.

6 MR. RAFFERTY: Well, we would ask it be admitted
7 per the stipulation even though he does not recall it since
8 he's on the email.

9 MR. SCHMIDT: We would object on geographic scope.
10 We object on geographic scope.

11 THE COURT: Well, Mr. Oriente, by looking at this
12 can you tell what Rite-Aid outlet it covers?

13 THE WITNESS: No, sir. It does not list the store
14 numbers on this document, Your Honor.

15 THE COURT: Is there anything on here that would
16 indicate that it applies to all the Rite-Aid stores
17 throughout the country?

18 THE WITNESS: No, it would not. It's those that
19 were on the list, but I don't have that list to tell you,
20 sir.

21 THE COURT: So without the list, you wouldn't know
22 whether it applied to Huntington/Cabell County or not. Am I
23 correct?

24 THE WITNESS: That is absolutely correct, Your
25 Honor.

1 THE COURT: Okay. Well, I'm not going to admit
2 it, Mr. Rafferty.

3 MR. RAFFERTY: May I ask one other question?

4 BY MR. RAFFERTY:

5 Q. Who is Andrew Palmer?

6 A. Andrew Palmer in 2009 was the head of loss prevention
7 and regulatory at Rite-Aid.

8 Q. That was for Rite-Aid headquarters; correct?

9 A. Yes. He worked at Rite-Aid headquarters.

10 Q. Okay. Let me ask you, setting the document aside, is
11 that indicative of proper due diligence under the CSMP for
12 that award or that threshold change to be given within a
13 little over an hour?

14 MR. SCHMIDT: Same objection.

15 THE COURT: Well, I'll overrule the objection to
16 the question.

17 You can answer the question if you can, Mr. Oriente.

18 THE WITNESS: Certainly. There was constant due
19 diligence done. So it would not have involved just that one
20 hour between the first email and when I responded they were
21 done. I would have known my customer.

22 So knowing my customer, I would know the history of
23 those Rite-Aids. I would have the ability on my computer
24 system to look up those Rite-Aids and see where they were
25 previous to being increased.

1 Q. And there should be documentation of that then;
2 correct?

3 A. There could be. I don't know if it exists today.

4 Q. Okay. But there should be documentation for every
5 threshold change request that comes in per the CSMP;
6 correct?

7 A. Some of the documentation would have involved a list
8 that that is referring to.

9 Q. Well, just having a list of stores that you're granting
10 it to does not -- is not indicative of due diligence, is it,
11 Mr. Oriente?

12 MR. SCHMIDT: Your Honor, we're now several
13 minutes into questioning about a document that was not
14 admitted.

15 MR. RAFFERTY: I'm just asking about policies.

16 THE COURT: Well, you can ask him -- ask him the
17 questions without using the document if you can, Mr.
18 Rafferty.

19 MR. RAFFERTY: Yes, Your Honor. My apologies.

20 BY MR. RAFFERTY:

21 Q. Was it your policy at McKesson as a DRA to grant
22 Threshold Change Requests simply with a listing of
23 stores?

24 A. No, that was not my policy.

25 Q. There should be other due diligence done on top of that

1 as well; correct?

2 **A.** Yes. I would have conducted additional due diligence.

3 **Q.** And have you ever heard the phrase if it's not
4 documented, it didn't happen?

5 **A.** I'm sorry. You were facing the other way. Can you
6 repeat the question?

7 **Q.** I'm sorry. I was trying to set the document down.
8 Have you ever heard the phrase if it's not documented, it
9 didn't happen?

10 **A.** I've heard of that phrase, yes.

11 **Q.** And that was actually one of the mantras that Mr.
12 Hartle had at McKesson, correct, your boss?

13 **A.** He did say that from time to time.

14 **Q.** Okay. And, in fact, Mr. Hartle was critical throughout
15 your tenure of your failure to document and do quality due
16 diligence and document that due diligence while you were a,
17 while you were -- well, during those -- during the years
18 2016 to 2018.

19 MR. SCHMIDT: Objection, compound.

20 THE COURT: Sustained.

21 BY MR. RAFFERTY:

22 **Q.** Was Mr. Hartle critical of your documentation of
23 TCRs and due diligence in the years 2016, '17 and '18?

24 **A.** As him being my direct boss, he did at times address
25 issues that he thought there could be improvements.

1 **Q.** I'd like to show you what's been marked for purposes of
2 identification as P-22927.

3 MR. SCHMIDT: Your Honor, this is one -- again,
4 this is one of the several performance reviews they have on
5 the witness. I can't imagine how it's relevant to try to
6 cross-examine a witness in open court about a performance
7 review he got in 2016 and try and pick out a sentence or two
8 to make him feel bad or put him in a bad light when that's
9 not even what the performance review says.

10 MR. RAFFERTY: That's not at all what I'm trying
11 to do, Your Honor. There's numerous comments in here
12 about -- in terms of documenting and doing the proper due
13 diligence which is exactly at the core of this case.

14 MR. SCHMIDT: Your Honor, --

15 THE COURT: Well, I think it goes to the
16 credibility of the witness possibly and -- as it relates to
17 his testimony he's given here. And I'll let you do it, Mr.
18 Rafferty.

19 MR. RAFFERTY: Thank you.

20 BY MR. RAFFERTY:

21 **Q.** If we can turn to the first page, this appears to
22 be a performance document for fiscal year 2016 for
23 Michael Oriente. Do you see that?

24 **A.** Yes.

25 **Q.** And the manager is Nathan Hartle?

1 **A.** Yes.

2 **Q.** Okay. And you're aware that this is something that's
3 done yearly by McKesson of its employees and DRAs; correct?

4 **A.** Yes, it is.

5 **Q.** Okay. I'm not going to go through much of it. I want
6 to direct your attention to Page 8, sir.

7 **A.** Yes.

8 **Q.** And here in 2016, if you look at --

9 MR. RAFFERTY: Well, I'll move -- go ahead and
10 move it in so we can put it up on the board, Your Honor,
11 22927.

12 MR. SCHMIDT: Objection for the reasons stated,
13 Your Honor.

14 THE COURT: Well, overruled.

15 Go ahead, Mr. Rafferty.

16 BY MR. RAFFERTY:

17 **Q.** Thank you. And I'm putting it up on the board
18 simply to orient you so you can see where I am, Mr.
19 Oriente.

20 **A.** Thank you.

21 **Q.** I want to go to the word "finally" here in the middle
22 of the first paragraph. There we go. This is under the
23 "Manager Comments" section.

24 It says, "Finally, a critical requirement of our
25 program is timely and accurate documentation of all we do.

1 As mentioned earlier in the review, if it is not documented,
2 it didn't happen. And this requirement is nonnegotiable and
3 something I need to see immediate improvement on."

4 Did I read that correctly?

5 **A.** Yes, that's what Nate wrote.

6 **Q.** Okay. And it was, in particular, pertaining to TCRs as
7 well as other issues; correct? The documentation I mean.

8 **A.** Yes, that is correct.

9 **Q.** With that answer, I won't need to read it.

10 **A.** I'm sorry. As far as having a TCR?

11 **Q.** No, the documentation of TCRs.

12 **A.** It, it didn't apply specifically to that. No, I would
13 not have made one adjustment without a TCR if that's what
14 you're asking.

15 **Q.** No, what -- I think we're talking past each other.
16 I'll let the document stand.

17 And, in fact, isn't it true that the continued --
18 the -- you continued to have problems with documenting due
19 diligence and TCRs even after that year? Correct?

20 **A.** Sir, every time you turn, I cannot hear you.

21 **Q.** I'm sorry. I've -- that's a bad habit of mine. I
22 apologize. I said the problems and the criticisms of your
23 ability and willingness to do quality documentation of TCRs
24 and due diligence continued to be a problem in your work as
25 an RNA; correct?

1 MR. SCHMIDT: Objection. He's now testifying
2 about the document which doesn't say what he just said.

3 THE COURT: Well, can you answer the question, Mr.
4 Oriente? Did you continue to have criticism about your --
5 the quality of your documentation?

6 THE WITNESS: The criticism that I received was
7 only from Nate Hartle in the time that he was with McKesson,
8 yes. You know, previous to Nate working for Don Walker and
9 since working for Nate working with a gentleman now, Scott
10 Matsumato (phonetic), my -- you know, criticism of my
11 performance and documentation was not noted.

12 THE COURT: Okay. Well, and I'll just say in
13 passing, I've looked through here and there are a lot of
14 positive comments in here about you, aren't there?

15 THE WITNESS: Thank you, sir. I appreciate that.

16 BY MR. RAFFERTY:

17 Q. Let me show you one last of these and we'll move
18 on. Let me show you what's been marked for
19 identification purposes as 22929.

20 A. Thank you.

21 Q. I do agree there are some good things in here, Mr.
22 Oriente. I want to focus just on one particular sentence.

23 And for the record, this is the performance evaluation
24 for Michael Oriente dated for fiscal year 2018.

25 Do you see that at the top, sir?

1 **A.** Yes.

2 **Q.** And if you would turn to Page 5, and under "Manager
3 Comments" at the top and the last sentence. Are you there,
4 sir?

5 **A.** Yes, I am.

6 **Q.** Okay. I want to give you a chance.

7 What Mr. Hartle says is, "As we have discussed in
8 previous reviews and statuses, I need to see improvement in
9 your timeliness, quality, and documentation of our standard
10 due diligence processes."

11 Is that what Mr. Hartle told you in 2018?

12 **A.** Yes, he did.

13 MR. RAFFERTY: Plaintiffs would move in 22929.

14 MR. SCHMIDT: Same objection.

15 THE COURT: I don't see any reason to admit the
16 document.

17 MR. RAFFERTY: That's fine, Your Honor.

18 THE COURT: I don't think you moved in 22927, did
19 you?

20 MR. RAFFERTY: I did not? I've had a bad habit of
21 that today, Your Honor. Since we've got the testimony,
22 that's fine, Your Honor.

23 THE COURT: I agree. I don't think it's
24 appropriate to put the witness's entire performance report
25 into the record of this trial. You made a couple of points,

1 and these provided a good faith basis for your questions,
2 but I don't think the documents need to be admitted. I'll
3 sustain the objection to admission of the documents.

4 MR. RAFFERTY: Thank you, Your Honor.

5 BY MR. RAFFERTY:

6 Q. I'm going to move on to some audits. Are you
7 familiar with the fact that audits were done of
8 different distribution centers by McKesson?

9 A. Yes.

10 Q. That was done in the ordinary course of McKesson's
11 business to go through and quality check distribution
12 centers?

13 A. Yes, McKesson performed self-audits on itself.

14 Q. I'm going to show you what's been marked as Plaintiffs'
15 Exhibit 00115.

16 A. Thank you.

17 Q. Let me know when you've had a chance to look at it,
18 sir.

19 A. Okay.

20 Q. Okay. This is an -- the cover page is an email from
21 Mr. Walker again dated April 20th, 2011. And it's to
22 several people, including you, down there in the bottom
23 right, second to last line. Do you see that?

24 A. Yes.

25 Q. Okay. And it attaches an audit of certain distribution

1 centers. Do you see that attached? It would be the second
2 page right after the cover page, audit report.

3 **A.** Yes.

4 **Q.** Okay. And in this Mr. Walker in the email specifically
5 says midway down in the first paragraph, "As you read
6 through it, I think you'll agree we have work to do. We
7 need to collectively and collaboratively step up our
8 reinforcement filing SOPs and completing various compliance
9 tasks as outlined in MOM."

10 Do you see that?

11 **A.** Yes.

12 **Q.** And then it goes down and he says, "I am certain if we
13 picked four different DCs we would find the same issues, so
14 we should assume this is a network wide concern."

15 Do you see that?

16 **A.** Yes, that's what he wrote.

17 **Q.** If we go to the second page of this, which is the audit
18 report by McKesson, it says "McKesson Internal Audit." Do
19 you see that?

20 **A.** Yes, I do.

21 **Q.** And it says current audit March 14th, 2011. So that
22 would be close to three years after the CSMP limitation?

23 **A.** Yes, a couple months short.

24 **Q.** And it says "Yellow Needs Improvement."

25 **A.** Yes, "Yellow Needs Improvement."

1 **Q.** And then if we go to Page 5, just to lay the foundation
2 as to which of the distribution centers were that were being
3 audited, it says -- I'm sorry. Under "Scope and
4 Objectives"?

5 **A.** Yes.

6 **Q.** And the last sentence of that paragraph identifies the
7 distribution centers that were audited. Do you see that?

8 **A.** Yes, I do.

9 **Q.** Okay. And they are Delran, New Jersey. That would be
10 your audit -- at that time, that was your distribution
11 center?

12 **A.** As a regulatory director, yes.

13 **Q.** And I'm sorry. I keep saying that. You weren't the
14 operations --

15 **A.** Yeah, in that same one.

16 **Q.** You were in charge of Regulatory Affairs for Delran?

17 **A.** Yes, during this time 2011.

18 **Q.** New Castle distributed into West Virginia. We
19 established that earlier this morning?

20 **A.** Yes, the northern part of the state.

21 **Q.** Washington Court House distributed into West Virginia
22 and into Cabell County; correct?

23 **A.** Yes, that distribution center.

24 **Q.** And then there's Conroe, Texas. Do you see that?

25 **A.** Yes, sir.

1 Q. And if we go to the overall conclusion on Page 6, just
2 the next page, under "Yellow Needs Improvement."

3 A. Yes.

4 Q. And down there it says, "Overall results of the audit
5 indicate that the distribution centers are not consistently
6 completing and maintaining the required documentation
7 associated with certain SOPs."

8 Is that accurate?

9 A. Yes. I'm sorry. Pertaining to the SOPs that we had,
10 yes.

11 Q. Standard operating procedures?

12 A. Yes, sir.

13 Q. Sure. So if we look at some of the findings as to some
14 of the, some of the actual audits --

15 MR. RAFFERTY: At this point, Your Honor, we would
16 move to admit 00115.

17 MR. SCHMIDT: No objection.

18 THE COURT: It's admitted.

19 MR. RAFFERTY: Thank you. That will make it
20 easier I think for people to see. I apologize.

21 BY MR. RAFFERTY:

22 Q. This is overall -- we've already covered that.
23 Let's go to, let's go to Page 13, please.

24 If we look at this particular audit, you have the
25 different columns; Issue/Observation, Risk, Action Plan,

1 Action Owner, and Action Date. Do you see that?

2 **A.** Yes, I do.

3 **Q.** Okay. And if we look under Level One forms right
4 there -- you got it. Let's just look at a couple.

5 Let's look at the ones -- first of all, the ones you
6 were in charge of. That is Delran. In Delran it says the
7 Level Ones were not completed for 20 of the 56 omits in July
8 of 2010 and all 54 omits for the month of November, 2010.

9 Do you see that?

10 **A.** Yes, I do see that.

11 **Q.** Okay.

12 THE COURT: What page are you on, Mr. Rafferty?
13 I'm lost here.

14 MR. RAFFERTY: Oh, I'm sorry, sir. Page 13, sir.

15 THE COURT: I've got a different Page 13.

16 MR. RAFFERTY: You know what. It's Page 12. I'm
17 looking at an old numbering system that I used.

18 THE COURT: Okay.

19 MR. RAFFERTY: Yeah. I'm sorry. That's my fault.

20 THE COURT: All right.

21 BY MR. RAFFERTY:

22 **Q.** So if we look at Delran, your Level One forms, so
23 for all 54 omits for the month of November, 2010, there
24 were no Level One reviews on file; correct?

25 **A.** That is what the audit team determined, yes.

1 **Q.** And consistent with the mantra of McKesson that we read
2 earlier, if it's not documented, it didn't happen. Correct?

3 MR. SCHMIDT: Objection to the characterization.
4 That wasn't McKesson's mantra.

5 THE COURT: Sustained.

6 BY MR. RAFFERTY:

7 **Q.** And then if we go down to Washington Court House --
8 I'm sorry -- New Castle, it says the omits -- the
9 required Level One forms were not completed for 21 of
10 the 30 omits in July and 20 of the 27 omits in November,
11 2010.

12 And just to be clear, these Level One forms are
13 supposed to be on file and completed for every omit.
14 Correct?

15 **A.** Yes, for every blocked order.

16 **Q.** Okay. And that's an omit. That's another word for
17 omit. Correct?

18 **A.** Yes, sir.

19 **Q.** Thank you. And then if we go to Washington Court House
20 which includes Cabell County, it says Level Ones weren't
21 completed for -- it's kind of small. It's hard to read. I
22 apologize.

23 The required Level One forms were not completed for all
24 19 omits in July, 2010, and 11 omits in November, 2010. In
25 addition, the omit report was not signed and dated by the DC

1 management as required by policy. And that is a requirement
2 of policy; correct?

3 **A.** Yes. DC management is to sign them before they get
4 filed.

5 **Q.** Okay. And then if we go to the next page -- now it's
6 Page 13. If we go to the next page and look at the audit
7 findings of Delran and just the Threshold Change Request,
8 that's when a customer is requesting or -- an increase in
9 their threshold level. Correct?

10 **A.** Yes, it is.

11 **Q.** And on Delran it says based on our review of 103
12 Threshold Change Request forms for July and November of
13 2010, we noted 38 out of 66 forms were not on file for the
14 month of November. Do you see that?

15 **A.** Yes, I do.

16 **Q.** And then Washington Court House, skipping down, it says
17 that 7 forms were not on file at the distribution center.
18 Do you see that?

19 **A.** Yes, I do.

20 **Q.** All of that is in violation of the policy and procedure
21 of McKesson in terms of its CSMP; correct?

22 **A.** It was to be documented, yes.

23 **Q.** Okay. I want to show you what's been marked for
24 purposes of identification as Plaintiffs' 00116. This is
25 another audit report, sir.

1 Do you see this is -- I'm sorry. Let me know when
2 you've had a chance to review it, sir.

3 (Pause)

4 **A.** Yes.

5 **Q.** Do you recognize this as another audit report dated
6 November 2nd, 2010 -- I'm sorry -- 2012?

7 **A.** Yes, 2012.

8 **Q.** Okay. And if we go over to the fourth page, this one
9 also pertains to Delran, New Jersey distribution center as
10 well; correct?

11 **A.** Yes.

12 **Q.** And that in this time period is still your -- for
13 November, 2012, time period, that was still your
14 distribution center for purposes of Regulatory Affairs?

15 **A.** Yes, it was.

16 **Q.** And here it says "Key Issues" down below. I'm sorry.

17 MR. RAFFERTY: I move to admit P-00116, Your
18 Honor.

19 MR. SCHMIDT: This one we'll object to foundation
20 with this witness.

21 THE COURT: This is 16?

22 MR. RAFFERTY: Yes. We'll discuss it -- I'll wait
23 for Your Honor.

24 MR. SCHMIDT: I didn't hear what the
25 representation was.

1 MR. RAFFERTY: I started speaking and then I said
2 I'd wait.

3 MR. SCHMIDT: Sorry.

4 THE COURT: Well, your objection is he doesn't lay
5 a proper foundation through this witness for admitting it.
6 Is that right?

7 MR. SCHMIDT: Yes.

8 THE COURT: Even though the authenticity is not in
9 question; right?

10 MR. SCHMIDT: Correct.

11 MR. RAFFERTY: And it's part of the stip, Your
12 Honor, and it is one of his -- one of the auditing
13 facilities -- one that he was in charge of at the Delran
14 facility and it's pertaining to retail national accounts of
15 which he was in charge of.

16 THE COURT: Did you -- you didn't bring all that
17 out through the witness, did you?

18 MR. RAFFERTY: Not yet. I thought because it was
19 part of the stip, there wasn't going to be an objection
20 but --

21 MR. SCHMIDT: Yeah. This is not a document you
22 received. We will agree to its admissibility under the
23 stipulation, but I think he needs to lay a foundation with
24 the witness. I don't think he'll be able to.

25 THE COURT: Okay. If you can lay a foundation,

1 I'll admit it, Mr. Rafferty.

2 MR. RAFFERTY: I think he stipulated to the
3 admission, Your Honor, just whether I can question him on it
4 per the stip.

5 THE COURT: Is that right, Mr. Schmidt?

6 MR. SCHMIDT: That is right, yes.

7 THE COURT: All right. I didn't understand that.
8 All right, it's admitted.

9 MR. RAFFERTY: Okay. Thank you.

10 BY MR. RAFFERTY:

11 **Q.** Were you in two thousand -- November 2nd, 2012, the
12 Director of Regulatory Affairs over Delran, New Jersey?

13 **A.** Yes, I was.

14 **Q.** And as part of your responsibilities in 2012 did that
15 entail being in charge of the regulatory compliance as it
16 pertains to Rite-Aid as one of the retail national accounts?

17 **A.** Yes.

18 **Q.** Okay. And, so, this would be an audit of your facility
19 and it pertains to specifically the documentation as it
20 pertains to retail national accounts. Correct?

21 MR. SCHMIDT: Objection. It's not his facility.
22 He just has responsibilities to include this among other
23 distribution centers.

24 MR. RAFFERTY: I think that's what I said. He had
25 regulatory compliance duties over what's being discussed.

1 THE COURT: Well, ask him that and see what he
2 says.

3 BY MR. RAFFERTY:

4 Q. Did you have regulatory compliance authority and
5 duties over the retail national accounts in 2012 --
6 strike that. It's getting late. In, in your -- as part
7 of your regulatory authorities and duties, did you have
8 authority and responsibility for regulatory compliance
9 over retail national accounts in 2012?

10 A. Yes, for certain, certain ones, not all.

11 Q. And Rite-Aid was one of those; correct?

12 A. Yes, it was.

13 Q. Okay. And you had regulatory authority over the
14 distribution center in Delran, New Jersey also; correct?

15 A. Not in total. The way the regulatory responsibility
16 fell, it was the DC management, whether it was the Director
17 of Operations or in a smaller DC, DC managers. They were
18 responsible for the Level One review to make sure it was
19 completed, to make sure it was signed, to make sure it was
20 filed.

21 Q. Okay. But you were the regulatory -- the Director of
22 Regulatory Affairs for the Delran, New Jersey, distribution
23 center; correct?

24 A. Yes.

25 Q. Okay.

1 MR. RAFFERTY: I think that lays a foundation.

2 THE COURT: Doesn't that take care of it, Mr.

3 Schmidt?

4 MR. SCHMIDT: No. He literally said the
5 distribution center manager was responsible for the
6 documentation.

7 MR. RAFFERTY: I think that would go to weight.

8 MR. SCHMIDT: And we have a distribution list on
9 this document that does not include him. He was, by
10 contrast, included on the last document for an email which
11 is why I didn't make that same objection.

12 THE COURT: Did you have any responsibility for
13 the documentation at that center?

14 THE WITNESS: Some of it, but not all of it, sir.
15 And this went from our internal audit department to Krista
16 Peck in legal. I was not copied on this.

17 THE COURT: I'm going to admit it. I'll overrule
18 the objection and admit it.

19 MR. RAFFERTY: Thank you, Your Honor.

20 BY MR. RAFFERTY:

21 **Q.** If we look at the second -- or we're still on Page
22 4, Mr. Oriente. And --

23 MR. SCHMIDT: I apologize for interrupting. As a
24 point of clarification, we had agreed to the admission. Our
25 objection was to questioning him.

1 THE COURT: I understand that.

2 MR. SCHMIDT: Okay.

3 THE COURT: I misspoke. But I'm going to overrule
4 the objection and let you question him. If we get too far
5 afield here, I'm sure you'll let us know.

6 MR. SCHMIDT: Thank you, Your Honor.

7 MR. RAFFERTY: I've only got a couple questions
8 about it, Your Honor, I promise.

9 BY MR. RAFFERTY:

10 Q. "Key Issues," do you see that? It's Page 4 down
11 toward the bottom, sir.

12 A. Yes.

13 Q. And the key issue here, according to this particular
14 audit, was policies and procedures to document threshold
15 reasoning and customer correspondence are not consistently
16 followed for retail national accounts slash chain stores and
17 institutional provider customer segments. Is that correct?

18 A. That's what is written here, yes.

19 Q. And, once again, pursuant to the CSMP, that is required
20 that there be -- that those -- the documentation for the
21 threshold reasoning must be made?

22 A. I would have had -- again, retail national accounts
23 were treated somewhat differently because of their own
24 regulatory compliance. I would have had TCRs for them, but
25 they were not handled in the same way that the independent

1 customers were.

2 **Q.** Okay. And then last question on this if we go to Page
3 7 of 10. Number one under "Issue/Observation, Retail
4 National Accounts and Institutional Providers."

5 It says, "Although thresholds are established for RNA
6 customers, documentation of customer questionnaires could
7 not be provided for RNA chain and institutional providers."

8 Do you see that?

9 **MR. SCHMIDT:** Your Honor, I'll just renew my
10 objection taking the Court's invitation. This happens to be
11 one where we have an action owner up on the screen for it
12 and it's not Mr. Oriente. He's -- he doesn't have
13 foundation to answer questions about this other than just
14 reading the witness statements.

15 **MR. RAFFERTY:** I don't think that's what it means.

16 **THE COURT:** Well, go ahead and ask him.

17 **BY MR. RAFFERTY:**

18 **Q.** Customer questionnaires regarding thresholds are to
19 be kept on file per the CSMP; correct?

20 **A.** Retail national accounts, customer questionnaires at
21 this time was handled differently.

22 **Q.** Okay. Well, according to this audit, that was one of
23 the issues; correct?

24 **A.** Yeah, because the retail national accounts in Texas
25 that handled the customer service that like Elaine Thomet

1 that you mentioned, Melissa Evangelista, they would have
2 dealt with the chain questionnaires and such.

3 **Q.** If we go down further, it says Level One reviews were
4 not documented for RNA chain and institutional providers
5 when controlled substance orders were omitted due to a
6 threshold being met.

7 That is a requirement of CSMP; correct?

8 **A.** Not as I understood it with the RNA because the RNA --
9 again, we were dealing with the corporation and not -- we
10 were dealing with the corporation regulatory team and not
11 the individual pharmacy that the Level One conducted was for
12 to call an individual pharmacy.

13 **Q.** So you disagree with the findings of the audit?

14 **A.** No, I don't disagree with the audit. I'm just
15 explaining the way it, it ran.

16 **Q.** Okay.

17 THE COURT: I'm going to overrule the objection
18 that's on the table. If I understood his testimony, I think
19 he did lay a proper foundation for answering the questions
20 you're asking, so I'll overrule that.

21 MR. RAFFERTY: Thank you, Your Honor.

22 BY MR. RAFFERTY:

23 **Q.** Here you are, Mr. Oriente.

24 **A.** Thanks.

25 **Q.** Uh-huh. Let me know when you've had a chance to review

1 it, sir.

2 (Pause)

3 **A.** Yes.

4 **Q.** This is an email string that you're participating in;
5 correct?

6 **A.** Yes.

7 **Q.** Okay. Do you see the name at the top of the latest or
8 earliest email? Do you see that?

9 **A.** Yes.

10 **Q.** If we start with the earliest email, which is from Dave
11 Gustin, and it's dated April 15th, 2011.

12 **A.** Yes, it is.

13 **Q.** And it details tightening up our increase process. Do
14 you see that?

15 **A.** Yes.

16 **Q.** Okay. And if we go over to the next page, Mr. Gustin
17 expresses that, "What I believe needs tightened up are the
18 follow-up visits to our accounts that have undergone
19 significant changes in their controls purchases in either
20 volume or percentage. We also need to tighten up the
21 process regarding granting increases. We have gotten to a
22 point where certain percentage increases are almost
23 automatic and where we are too easily accepting of reasons
24 like business increase for raising thresholds by small
25 amounts. The SOP says clearly this is not an acceptable

1 reason unless sales data supports it."

2 Do you agree with that that business increase is not a
3 valid or acceptable reason for a threshold increase without
4 additional data?

5 **A.** During the evolution of the program, business increase
6 was accepted at times; basically, a pharmacy saying that
7 they're seeing more prescriptions and having an increase in
8 business.

9 As our program evolved and we, you know, put other
10 checks in place, we increased the reason as to why we were
11 no longer accepting business increase.

12 **Q.** Well, generally, though, business increase by itself
13 without some accompanying data such as a new pharmacy
14 opening or a competitor going out of business for another
15 pharmacy, something -- or sales data, as Mr. Gustin says,
16 that has to accompany simply an increase in business as a
17 reason for a TCR; correct?

18 **A.** Those would be reasons to substantiate the increase,
19 yes.

20 **Q.** And according to Mr. Gustin, he was saying that certain
21 percentage of increases are getting to be almost automatic,
22 which would mean -- or do you understand what that would
23 mean?

24 **A.** I can't speak on Dave's commenting on that. I didn't
25 feel that way, that they were automatic.

1 **Q.** Okay. And then he then forwards this to some people in
2 an email above it where he says the DEA is taking a very
3 active and detailed interest in the CSMP. Do you see that?

4 **A.** Yes.

5 **Q.** He goes on two sentences later, "There's no reason to
6 believe it will only be with the DCs and with ISMC accounts
7 and would not find its way into RNAs and other segments."

8 Do you see that?

9 **A.** Yes.

10 **Q.** And then he says, "CVS was fined 75 million for being
11 lax and it wasn't even controls. That was a warning shot
12 across our collective bows."

13 Do you see that?

14 **A.** I see that, but I'm not familiar with the specifics on
15 that.

16 **Q.** So -- so do you as -- as a Director of Regulatory
17 Affairs is part of your job to monitor what's going on in
18 terms of other -- in terms of your customers and whether or
19 not they're being fined by the DEA for violations of the
20 Controlled Substances Act?

21 MR. SCHMIDT: Objection. CVS wasn't a customer of
22 McKesson's at this time.

23 MR. RAFFERTY: I'm not --

24 MR. SCHMIDT: That was the representation in the
25 question.

1 MR. RAFFERTY: I didn't mean for there to be.

2 MR. SCHMIDT: Thank you.

3 BY MR. RAFFERTY:

4 Q. Just setting aside CVS and setting aside the
5 document, was it part of your responsibility as a
6 Director of Regulatory Affairs to monitor your customers
7 in terms of whether they are being fined by the DEA for
8 violations of the Controlled Substances Act?

9 A. Yes. I performed reviews of our customers on the OIG,
10 did an OIG search, as well as an internet search, additional
11 Google searches on corporations to see if there was any
12 disciplinary action. We'd also check on state and the
13 federal DEA website to see about that, yes.

14 Q. Okay. So would you have monitored whether or not, for
15 example, Rite-Aid was being fined for violations of the
16 Controlled Substances Act?

17 A. I would look for that. I may not have seen every fine
18 that they received. I, I wouldn't know.

19 Q. Wouldn't that be relevant to your -- or part of your
20 due diligence in determining whether or not you should allow
21 them to get increases in their thresholds?

22 MR. SCHMIDT: Objection, speculation.

23 THE COURT: Well, overruled.

24 If you can answer it, you may answer it.

25 THE WITNESS: I would, I would conduct those

1 reviews. I may not find a specific instance, you know,
2 where a state may have brought some action against Rite-Aid.
3 Again, they had close to 5,000 stores.

4 BY MR. RAFFERTY:

5 **Q.** Okay. Do you know how many times Rite-Aid has been
6 fined by the DEA say in the last 12 to 14 years for
7 violations of the Controlled Substances Act?

8 **A.** No, I do not.

9 **Q.** If I could -- if I could show you now what we're
10 marking for purposes of identification --

11 MR. RAFFERTY: Oh, yeah, plaintiffs move in 12821.

12 MR. SCHMIDT: No objection, Your Honor.

13 THE COURT: It's admitted.

14 BY MR. RAFFERTY:

15 **Q.** Now I'd like to show you what's been marked for
16 purposes of identification as P-08761. Let me know when
17 you've had a chance to review it, sir.

18 **A.** Yes.

19 **Q.** This is an email from Dave Gustin at the top to several
20 people, including you, Michael Oriente. Do you see that?

21 **A.** Yes. He's -- well, it started with Tom McDonald.

22 **Q.** Yeah, yeah, if we could -- if you want to start down at
23 the bottom, that's fine.

24 So it's Tom McDonald to that group that we talked
25 about, PGRDRC. Did I get that right?

1 **A.** Yes.

2 **Q.** And that's the group -- you would have gotten that as
3 part of that group; correct?

4 **A.** That is correct.

5 **Q.** Okay. And this is in 2012, July 27th, 2012?

6 **A.** Yes.

7 **Q.** It says, "I have noticed a trend with TCRs that needs
8 to be addressed. The information submitted on the TCR is
9 extremely important to our documentation process. When I
10 screen the TCR, I'm assuming some steps have been completed.
11 First and foremost is direct contact with the customer."

12 And that is one of the requirements that the CSMP when
13 you're doing a TCR analysis is to have direct contact with a
14 customer; correct?

15 **A.** As far as the ISMC customers, yes.

16 **Q.** And with the RNA you would have contact, direct contact
17 with headquarters; correct?

18 **A.** Yes, sir.

19 **Q.** Okay. "This contact is required." So you agree with
20 that.

21 "Be sure you are noting who you spoke with when
22 completing the documentation portion. Ask for a specific
23 reason for the increase in usage. Business growth should be
24 accompanied by specific examples of what is generating that
25 growth."

1 Do you see that?

2 **A.** Yes, I do.

3 **Q.** And that's what we were talking about earlier as to the
4 reasoning for the -- the reason to grant the TCR for
5 business growth should be accompanied by something else.
6 Correct?

7 **A.** Yes. I see here now Tom sent this to his region.

8 **Q.** Uh-huh.

9 **A.** The regulatory directors were copied. This would have
10 went to his west region, his distribution centers that would
11 have been submitting TCRs to him.

12 **Q.** Okay. But that, but that's a company-wide issue;
13 right? I mean, the policies that he's referring to there
14 are company-wide issues in terms of proper documentation of
15 TCRs?

16 MR. SCHMIDT: Objection, compound.

17 THE COURT: Sustained. Break it out.

18 BY MR. RAFFERTY:

19 **Q.** In terms of the -- well, what Mr. McDonald is
20 referring to here in terms of having additional
21 information as to what generated the business growth is
22 something that was a company-wide policy; correct?

23 **A.** The reason text was required, some of them had business
24 increase and as the program evolved, we got more in-depth as
25 to the reason why and Tom states an example there.

1 **Q.** And it says general terms like business growth or
2 customer hit their threshold are not acceptable.

3 Would you agree with that, sir?

4 **A.** Yes. They would need to support why there's business
5 growth.

6 MR. RAFFERTY: Move to admit 08761.

7 MR. SCHMIDT: No objection.

8 THE COURT: It's admitted.

9 BY MR. RAFFERTY:

10 **Q.** Now, in terms of thresholds being increased, these
11 TCRs that we've been talking a lot about, there are
12 certain red flags that are identified. And we've talked
13 about a few of them here today as to what you look for
14 in determining whether or not to grant a TCR. Correct?

15 **A.** Yes.

16 **Q.** Okay. And, in fact, those were discussed -- we've
17 discussed those all along. But there was actually a policy
18 put in place identifying those red flags in 2015 by
19 McKesson; correct?

20 **A.** Yes, I believe we had red flags identified.

21 **Q.** Okay. And if we look at -- I'm handing you what's been
22 marked for identification purposes as P-12643, sir. Let me
23 know when you've had a moment to review.

24 (Pause)

25 Are you ready, sir?

1 **A.** Yes. I'm trying to see who authored this document.
2 I'm not sure who created it. I am familiar with it.

3 **Q.** I guess that was going to be my question. You're
4 familiar with this, these red flags; correct?

5 **A.** Yes, I am.

6 **Q.** Okay.

7 MR. RAFFERTY: I believe this is on the
8 stipulation, Your Honor, so we would at this time move in
9 P-12643.

10 MR. SCHMIDT: No objection.

11 THE COURT: It's admitted.

12 BY MR. RAFFERTY:

13 **Q.** So I want to just highlight a couple of these if we
14 could bring it up on the board.

15 Here it says -- of course, this is in 2015 and I want
16 to focus on just a couple areas in this lengthy document.
17 I'm not going to go through very much of it.

18 It says "McKesson CSMP Red Flags." And it says that
19 red flags are indicators or areas of possible concern
20 regarding shipments of controlled substances.

21 Do you see that?

22 **A.** Yes, yes.

23 **Q.** And you would agree with that; right?

24 **A.** Yes, they could be possible concerns.

25 **Q.** Okay. And then it says down here in the next paragraph

1 it is important that when red flags are identified they are
2 reviewed to ensure appropriate due diligence.

3 You would agree with that; correct? It's the last
4 sentence of the next paragraph. I'm sorry.

5 **A.** Yes.

6 **Q.** Okay. And then it's broken up into a couple sections.
7 And one of them, if you go down to Apparent Red Flags, and
8 those are red flags that are more readily identifiable. Do
9 you see that?

10 **A.** Yes, they are.

11 **Q.** And those do not require expertise or extensive
12 analysis. Do you see that?

13 **A.** That's what's written here, yes.

14 **Q.** And then if you go over two pages, point three, they've
15 listed out a whole bunch of them starting with -- under
16 Responses in the Customer Questionnaire on Page 2 and then
17 they've got a list all the way down to the letter R on Page
18 3. Do you see that?

19 **A.** Yes.

20 **Q.** Okay. I just want to look at two of those out of that
21 list. M at the top, and one of the red flags they identify
22 is the pharmacy's primary business model involves filling
23 prescriptions for or dispensing directly to pain clinics.
24 Do you see that?

25 **A.** Yes, I do.

1 **Q.** And you would agree as a Director of Regulatory Affairs
2 that that would be a red flag that would require some due
3 diligence?

4 **A.** Yes, it would if they were dispensing directly to pain
5 clinics.

6 **Q.** Okay. And then if we look at Q, the pharmacy's
7 business model centers on controlled substances or the
8 pharmacy is planning to expand its controlled substance
9 business. Do you see that?

10 **A.** Yes, I do.

11 **Q.** And do you agree that's a red flag?

12 **A.** Yes.

13 **Q.** Now, if we go over to the next page, there are some
14 other, what's referred to as detailed red flags. Do you see
15 that?

16 **A.** Yes.

17 **Q.** I want to ask you just about a couple of those.
18 Geographic location. Are you with me?

19 **A.** Yes, I am.

20 **Q.** Oh, okay. It says the pharmacy is located in a
21 geographic area known or suspected of having higher than
22 normal prescription drug diversion or level of prescribing.
23 This would include areas where diversion schemes are known
24 to be centrally located.

25 Do you see that?

1 **A.** Yes, sir.

2 **Q.** And you agree that is a red flag that you as Director
3 of Regulatory Affairs would look out for?

4 **A.** It would be one of the items taken into account, yes,
5 sir.

6 **Q.** Okay. And there are several here. I'm just
7 identifying a couple of them just to save court time.

8 **A.** Okay.

9 **Q.** And here it says -- if you go on further, it says -- on
10 the next page under "Other Distributors," it's on Page 6.
11 There you go, Number 5: Pharmacy purchases controlled
12 substances from other distributors.

13 That is a red flag the Director of Regulatory Affairs
14 would be looking out for?

15 **A.** It's not always a red flag, but it is one thing that
16 would, you know, --

17 **Q.** Because you can't always monitor -- I'm sorry. I
18 didn't mean to interrupt you.

19 **A.** I was going to say many pharmacies, especially in my
20 area of the northeast, use two or more wholesalers.

21 **Q.** Okay.

22 **A.** It's a common practice.

23 **Q.** And then if we look under "Statistical Red Flags," here
24 it says under 1(a), "A customer's controls/prescription
25 ratio when compared to similar customers serviced by the

1 same distribution center seems unusually high."

2 Do you see that?

3 **A.** Yes, I see that.

4 **Q.** And it lists a controlled -- let me just read it.

5 "As a benchmark, DEA has previously stated that an
6 average retail pharmacy's controls/Rx ratio is approximately
7 20 to 25 percent."

8 Are you familiar with that?

9 **A.** Yes, I am.

10 **Q.** Okay. And you agree to that?

11 **A.** Yes, I would.

12 **Q.** Okay.

13 THE COURT: What's a controls to prescription
14 ratio?

15 THE WITNESS: It would be the scheduled drugs II
16 through V, the amount of pills, in comparison to the Rx
17 product such as antibacterial medicine, medicine for
18 psoriasis, dementia, Alzheimer's, PTSD, so the Rx. So what
19 percent of their purchases are controlled substances
20 compared to their total business.

21 THE COURT: Okay.

22 BY MR. RAFFERTY:

23 **Q.** So the higher the controlled prescription ratio,
24 the stronger the red flag. Do you agree with that?

25 **A.** That would be one indicator for us to conduct

1 additional due diligence, yes.

2 **Q.** So if you had a customer, for example, that was at
3 90 percent controls to prescription ratio, that would be a
4 very strong red flag that you would want to investigate;
5 correct?

6 **MR. SCHMIDT:** Objection, foundation and time
7 period.

8 **THE COURT:** I'll allow him to answer it.
9 Overruled.

10 **THE WITNESS:** Could you ask the question again,
11 please?

12 **BY MR. RAFFERTY:**

13 **Q.** Yeah. Say you had a customer that had a controls
14 to prescription ratio of 90 percent. That would be a
15 very strong red flag that you would want to investigate;
16 correct?

17 **A.** More than likely, that customer would have been
18 terminated before they ever got to 90 percent.

19 **Q.** So it's that strong red flag and you would terminate
20 the customer?

21 **A.** Yes, sir.

22 **Q.** Okay. By terminate, you mean just stop doing business
23 with them at all?

24 **A.** Totally cut them off.

25 **Q.** Okay.

1 MR. RAFFERTY: Your Honor, I'm going to show the
2 witness -- make sure I've got the right document. If I
3 could have just one moment, Your Honor.

4 (Pause)

5 MR. RAFFERTY: Your Honor, I think at this point
6 I've got four documents that are on the stip that I would
7 like to just move into evidence to move things along.

8 THE COURT: All right. You can identify them and
9 see if there's any objection to them.

10 MR. RAFFERTY: They are --

11 MR. SCHMIDT: I need a copy.

12 MR. RAFFERTY: I'm sorry.

13 MR. SCHMIDT: No worries.

14 MR. RAFFERTY: Your Honor, may I make a
15 suggestion?

16 THE COURT: Yes.

17 MR. RAFFERTY: I know we've only got 31 minutes
18 left. While he's reviewing that, I can go over with my team
19 for five minutes and try to narrow this down to the last
20 few.

21 THE COURT: Okay. So you want to take a
22 five-minute break right here?

23 MR. RAFFERTY: Yes, Your Honor. I know it's
24 unusual because we've only got 30 minutes left.

25 MR. SCHMIDT: Our only request is if we can get

1 through at least the direct today.

2 THE COURT: Can you get through your direct?

3 MR. RAFFERTY: I hope to, yes, Your Honor.

4 THE COURT: Well, all right. Let's keep it to --
5 are you going to need five minutes?

6 MR. RAFFERTY: At the most, yes. I will need five
7 minutes because I just want to make sure that I've
8 covered --

9 THE COURT: Okay. Go ahead and I'll just stay
10 right here and do it as fast as you can.

11 MR. RAFFERTY: Yes, sir.

12 THE COURT: I think it's good to keep everybody in
13 the courtroom. Everybody wanted to stand up anyway.

14 (Pause in proceedings from 5:00 p.m. until 5:05 p.m.)

15 MR. RAFFERTY: I'm fine doing this after since
16 we've got the witness on the stand. I wasn't planning on
17 asking him any questions. I was just going to see if
18 something needs to be cleaned up. He's coming back
19 tomorrow. Is that okay, Your Honor?

20 THE COURT: Well, we need to get everybody back in
21 the courtroom. I thought I could speed this up by staying
22 on the bench.

23 MR. RAFFERTY: I'm hoping to finish, but if
24 there's something that needs to be cleared up with him on
25 redirect, I can do it on redirect.

1 THE COURT: Do you think you can finish with him
2 in 25 minutes?

3 MR. RAFFERTY: That's my goal.

4 THE COURT: Okay. Looks like we've got everybody
5 back in the courtroom now, so let's go ahead and try to get
6 it done.

7 Obviously, you're going to have to come back tomorrow,
8 Mr. Oriente.

9 THE WITNESS: That's fine, Your Honor.

10 MR. RAFFERTY: In terms of the -- I'm sorry, Your
11 Honor. May I proceed?

12 THE COURT: Go ahead, please.

13 BY MR. RAFFERTY:

14 **Q.** In terms of the CSMP, are you aware that there was
15 a policy in place that was listed in the CSMP
16 instructing people not to use the word "suspicious"?

17 **A.** Yes, I was.

18 MR. RAFFERTY: If we could pull up P-42836.

19 It's been admitted, Your Honor.

20 BY MR. RAFFERTY:

21 **Q.** And if we could go to Page 15 under the Life of the
22 Customer under the line Customer Communications. And
23 this is actually inside the policy and procedures of
24 McKesson; correct?

25 **A.** Yes, sir, it was.

1 **Q.** Okay. And it says, "All communications regarding
2 controlled substances are subject to subpoena and
3 discovery."

4 Do you see that?

5 **A.** Yes, I do.

6 **Q.** And then the company, McKesson, is actually instructing
7 people, including the DRA, to write information as if it
8 were being viewed by the DEA. Do you see that?

9 **A.** Yes.

10 **Q.** And then it says refrain from using the word
11 "suspicious" in communications. Do you see that?

12 **A.** Yes. Once we identified a customer using the word
13 "suspicious" towards an order, we would have to take action
14 against that. So we had -- as we conducted our reviews, we
15 had what was known as customers of interest.

16 **Q.** And once McKesson deems an order and/or customer
17 suspicious, McKesson is required to act. This means all
18 controlled substances sales to that customer must cease and
19 the DEA must be notified.

20 **A.** Yes.

21 **Q.** So the company as early as 2008 was telling its people,
22 its employees and its regulatory folks not to put stuff in
23 writing with the word "suspicious" because that would
24 require McKesson to act; correct?

25 **A.** No, that's not correct.

1 Q. And then if I could, let's take a look at -- that
2 stayed in the CSMP for several years, didn't it?

3 A. Yes. The -- in the CSMP when it reached Level Three
4 and was deemed suspicious, it would be -- controls would be
5 shut off.

6 Q. And you don't want somebody saying the word
7 "suspicious" and then triggering the duty to act; correct?

8 A. Well, it wouldn't be suspicious until I conducted my
9 Level Three. During the review of Level One and Two, it may
10 not be suspicious.

11 Q. Then why do you have to instruct employees not to use
12 that word in quotes, "suspicious"?

13 A. Once you use that word, we need to take action.

14 Q. Right. And you didn't want to take action?

15 A. No, that's not true. We took action on suspicious
16 orders and customers. We just didn't want it labeled to a
17 customer that we deemed was not suspicious.

18 Q. And if you could, let's take a look at P-12627 which is
19 already in evidence. That's the 2013 CSMP.

20 MR. SCHMIDT: I don't think it was, but no
21 objection to it going in.

22 MR. RAFFERTY: Okay. Do you need a copy?

23 MR. SCHMIDT: No. Your colleague gave me one.

24 Thank you.

25 BY MR. RAFFERTY:

1 **Q.** And if we look at Page 23 of the 2013 version of
2 the CSMP, once again it's got a customer communications
3 section. Do you see that?

4 **A.** Yes.

5 **Q.** And it's got that same language in Number 1 and it goes
6 all the way down, and it says the same exact thing. And it
7 says refrain from using the word "suspicious" in
8 communications. Do you see that?

9 **A.** Yes.

10 **Q.** So for five years, that remained -- at least for five
11 years that remained the policy and procedure of McKesson;
12 correct?

13 **A.** Yes. We didn't just throw that word around. When we
14 named something suspicious, we took action.

15 **Q.** I'm going to show you what's been marked for purposes
16 of identification as P-42814.

17 **A.** Thank you.

18 **Q.** And if we look at Page 2, Report of Government Contact,
19 do you see that? It's got Michael Oriente in it?

20 **A.** Yes, I see it.

21 **Q.** And it attaches a letter from the DEA. Do you see
22 that?

23 **A.** I'm looking for the attachment.

24 **Q.** It should be on Page 4.

25 **A.** Yes, sorry.

1 **Q.** And this is -- it says from the DEA Department of
2 Justice regarding -- sent to Washington Court House;
3 correct?

4 **A.** Yes.

5 MR. SCHMIDT: If we're going to read the letter
6 in, we'll object to that -- I'll object to that as hearsay.

7 MR. RAFFERTY: This is putting them on notice of
8 the failures at Washington Court House, Your Honor,
9 according to the DEA which is the distribution center that
10 feeds Cabell County and he's copied on it.

11 THE COURT: Well, are you offering it for the
12 truth?

13 MR. RAFFERTY: I'm offering it for notice.

14 THE COURT: Well, I'm not going to consider it for
15 the truth, but I'll admit it for the limited purpose.

16 MR. RAFFERTY: Thank you, Your Honor.

17 THE COURT: 42814 is admitted.

18 BY MR. RAFFERTY:

19 **Q.** If we look, it says from March 31st to April 21st,
20 2011, the DEA Columbus District office conducted an
21 investigation of the McKesson Company. On August the
22 30th there was a management discussion between you and
23 investigators.

24 It goes on to say failure to report suspicious
25 controlled substance orders in violation of Title 21, Code

1 of Federal Regulations, et cetera, which states that the
2 registrant shall inform DEA of suspicious orders.

3 Do you see that?

4 **A.** I do. This was not one of my distribution centers, so
5 I really would not have been involved in the greater details
6 of this. I would have read it and filed it.

7 **Q.** Correct. But you're on it; correct?

8 **A.** Yeah, yeah, I was a recipient of it. But, again, I had
9 six DCs to take care of myself. I wasn't going to worry
10 about this one.

11 **Q.** Okay. Now, on Page 1 after Mr. Gustin sends an email
12 to Mr. Walker at the bottom after looking at the failures,
13 he says, "I cannot say this is a surprise."

14 Do you see that?

15 **A.** That is what Dave wrote, yeah.

16 **Q.** And Mr. Gustin was the DRA of the Regulatory Affairs
17 for the Washington Court House; correct?

18 **A.** That would have been -- I don't believe I was copied on
19 Dave's reply to Don that you just mentioned.

20 **Q.** And you know that there were -- between the dates of
21 May, 2008 and July, 2013 there was zero suspicious orders
22 reported for West Virginia customers by McKesson?

23 **A.** I do not know that number.

24 **Q.** And you mentioned earlier in your examination about the
25 fact that you knew that Rite-Aid self-distributed certain

1 controlled substances to themselves; correct?

2 **A.** Yes, sir.

3 **Q.** Okay. And, in fact, what they self-distributed to
4 themselves was hydrocodone; correct?

5 **A.** Yes. At that time, hydrocodone was a Schedule III drug
6 and McKesson serviced Rite-Aid with Schedule IIs only.

7 **Q.** Okay. And at no time that you were the Director of
8 Regulatory Affairs for McKesson did you request from
9 Rite-Aid the self-distribution numbers of hydrocodone,
10 meaning how much were they distributing to themselves to
11 you. Correct?

12 **A.** No, we did not. What we did was we set lower
13 thresholds because we were a secondary supplier of that drug
14 versus us being the primary. So they would have had a lower
15 threshold on hydrocodone.

16 MR. RAFFERTY: Sorry, Your Honor. I'm trying to
17 hurry and get caught up.

18 BY MR. RAFFERTY:

19 **Q.** I'm going to show you what's been marked for
20 purposes of identification as P-16690.

21 **A.** Thank you.

22 MR. SCHMIDT: Your Honor, this relates to the same
23 issue that came up with ABDC. We don't object to moving it
24 in for the reasons previously stated. We object to
25 questions on this.

1 MR. RAFFERTY: He's listed on the email.

2 MR. SCHMIDT: He's not the one talking on the
3 email. And you weren't there for the Judge's guidance on
4 this issue, but I think the Judge's guidance on this issue
5 calls for moving it in and not questioning.

6 THE COURT: You want it to come in but you don't
7 want him to question him on it?

8 MR. SCHMIDT: I don't think it's proper. He
9 doesn't have knowledge about what they want to use from this
10 email anyway.

11 THE COURT: Unless you can lay that foundation,
12 Mr. Rafferty, but I'll admit the document there being no
13 objection to its admission.

14 MR. RAFFERTY: Thank you.

15 BY MR. RAFFERTY:

16 **Q.** Mr. Oriente, do you recall being involved in this
17 email conversation?

18 MR. SCHMIDT: Actually, if I can reverse my
19 position, I do object to its entry if he's going to try to
20 question him about it. I don't think he can lay a
21 foundation. I think under what's happened already in this
22 case, it's improper.

23 THE COURT: I'll sustain the objection.

24 MR. RAFFERTY: Your Honor, this is part of the
25 stipulation. So if I'm not -- if I don't question him about

1 it, then I assume it comes in under the stip.

2 MR. SCHMIDT: We don't agree to that.

3 MR. RAFFERTY: How is that possible?

4 MR. SCHMIDT: Because during the course of this
5 trial, I offered to stipulate to this to come in. Counsel
6 rejected that offer. They're trying to use it with a
7 witness that has no proper purpose who didn't say the things
8 they want to use in it. So we object to it.

9 THE COURT: Mr. Farrell, you haven't said anything
10 all day, so I'll welcome anything you want to say.

11 MR. FARRELL: I would suggest, based on the
12 concerns expressed by counsel, we have an approach-the-bench
13 discussion.

14 MR. SCHMIDT: We don't object to that, Your Honor.
15 We don't object to a side bar if that's what he wants.

16 MR. FARRELL: Sidebar, Judge.

17 THE COURT: That's kind of unusual in this kind of
18 a trial, but we'll go over here in the corner. I'm not sure
19 why we're doing this.

20 (Bench conference on the record)

21 MR. FARRELL: Mr. Rafferty was not present when we
22 had our *in camera* or in chambers discussion regarding
23 inflammatory emails. So to be fair to Mr. Rafferty, I think
24 that's the issue that Mr. Schmidt is trying to raise is that
25 this particular email may have the tendency to go viral like

1 other emails have done.

2 And, so, I wanted to make sure that there was an
3 opportunity for us to have a full discussion without having
4 the inflammatory remarks that are of concern to Mr. Schmidt.

5 MR. RAFFERTY: If I could say something also.
6 Just so the Court knows, I was told about your order and
7 your ruling and I provided this document to Mr. Schmidt that
8 very day.

9 THE COURT: Okay.

10 MR. SCHMIDT: If I can point the Court to the
11 language, it's this comment.

12 THE COURT: Oh, okay.

13 MR. SCHMIDT: There's no conceivable purpose for
14 it. I think what they've done is they've gone through our
15 files and found the one inflammatory email they can find and
16 now they're trying to run it in and I think we've seen that
17 is improper.

18 MR. RAFFERTY: That is not the case at all, Your
19 Honor. This was produced to us in the files of Michael
20 Oriente who's on the email. Yes, we do actually review all
21 of the documents.

22 THE COURT: And you're concerned about "moving to
23 heroin and meth so we don't have to monitor it."

24 MR. SCHMIDT: Yes, which is not a statement he
25 endorsed and, frankly, not relevant that someone said

1 something that's not appropriate.

2 MR. RAFFERTY: It is -- sorry. It is relevant for
3 a couple purposes.

4 Number one, this is notice that these employees know
5 that people are moving to heroin from opioids. It says it
6 right down here in the initial one. And it is relevant
7 because these are statements made by him.

8 MR. SCHMIDT: So now we're having non-present
9 witnesses be expert witnesses on --

10 THE COURT: Okay. I'm going to let the document
11 in. I'm not going to let you question him about it.

12 MR. RAFFERTY: Very well, Your Honor. Thank you.

13 MR. SCHMIDT: Thank you for letting us have the
14 sidebar.

15 (Bench conference concluded)

16 MR. RAFFERTY: Your Honor, based on Your Honor's
17 earlier ruling regarding the DOJ letters, we have -- would
18 like to proffer P-00119, P-00118, P-00121, and P-00122. All
19 of these letters are letters from the DEA or DOJ to McKesson
20 detailing the, detailing the violations of the Controlled
21 Substances Act as it pertains to opioids. And along with
22 the several other findings within these, we believe these
23 are all admissible. They're all on the stip. We had
24 proposed to file them. I'm not going to -- we propose to
25 move them into evidence. They're part of the stip. We

1 understand your previous ruling and I believe what we would
2 request would be -- well, I'll let Mr. Majestro --

3 MR. MAJESTRO: Your Honor --

4 I'm assuming that you object to the introduction of
5 these. You oppose that.

6 What I would propose, Your Honor, is let us -- I think
7 Mr. Rafferty is finished with the witness. Before we pass
8 the witness, we wanted to move these into admission. And we
9 would like the opportunity to file a short brief on why we
10 think they're admissible. We think this is an important
11 witness. We didn't want to pass the witness without
12 preserving that for the record.

13 MR. SCHMIDT: We obviously don't object, if it's
14 agreeable with the Court, to them filing a brief. We've
15 done the same. Obviously, we would need suitable time to
16 respond. We will object to them moving them into evidence.
17 They're the same issue the Court's already addressed.

18 THE COURT: Well, I'll hold in abeyance my ruling
19 on these until I read your papers, Mr. Majestro.

20 MR. MAJESTRO: Thank you, Your Honor.

21 THE COURT: And copies to my clerk, please.

22 MR. SCHMIDT: Could I actually get copies of the
23 ones you just read?

24 MR. RAFFERTY: Yeah. It will take us just a
25 minute. We still have two other outstanding issues.

1 Number one, the customer script documents. Is there
2 any objection to those?

3 MR. SCHMIDT: There's not to 13714. There is not
4 to 13712. The only two that I have questions about that I
5 need to check on are 13710 and 13284. And on the 284 what's
6 throwing me is that it has a Hurricane address.

7 All right, I'm told no objection to 13284.

8 MR. RAFFERTY: Okay. So I'm sorry, Paul, Mr.
9 Schmidt. I want to get those numbers.

10 MR. SCHMIDT: I'm sorry.

11 THE COURT: Are you asking me to revisit the prior
12 ruling?

13 MR. RAFFERTY: No, no, no. I was -- these are
14 documents separate that I move, just to move in per our
15 stip. And I gave -- that was right before I took the break,
16 Your Honor, and Mr. Schmidt was reviewing them to see if he
17 had an objection. So I now understand that he has no
18 objection to three of the four.

19 MR. SCHMIDT: 13712, 13714, 13284. And the
20 contested one, at least for now that we just need time to
21 review, is 13710.

22 MR. RAFFERTY: Okay. Then I think that will take
23 care of that.

24 So I would move into admission, Your Honor, 13712 --

25 THE COURT: We need to see the documents.

1 MR. RAFFERTY: Oh, yes, yes, Your Honor.

2 THE COURT: So there's four documents here.

3 There's no objection to three of them. There's an objection
4 to one of them.

5 MR. RAFFERTY: I don't think there's an objection
6 yet. I think Mr. Schmidt just wanted some additional time.

7 THE COURT: All right. Are these separate from
8 the ones Mr. Majestro is going to submit?

9 MR. RAFFERTY: Yeah, totally different issue, Your
10 Honor, yeah. I'm sorry. Yeah.

11 THE COURT: That's what I thought but I wanted to
12 make sure.

13 MR. RAFFERTY: Yeah, the DEA letters are one
14 thing. These are documents that were on the stip that I
15 just -- in order to save the Court time, I didn't want to
16 try to go through the witness and enter them in. So we'll
17 get those together for the Court right now.

18 THE CLERK: Before you leave.

19 MR. RAFFERTY: Absolutely.

20 THE COURT: Are you ready to pass the witness, Mr.
21 Rafferty?

22 MR. RAFFERTY: Yes. There was one other
23 housekeeping matter and that is getting -- we would like to
24 be able to get together with Mr. Schmidt, as he suggested,
25 on the Rite-Aid prescription data that he thinks there was

1 somekind of manipulation.

2 THE COURT: Can I excuse Mr. Oriente --

3 MR. RAFFERTY: Oh, yes.

4 THE COURT: -- and not make him sit here through
5 all of this?

6 MR. RAFFERTY: Absolutely.

7 THE COURT: You've probably had enough lawyer ease
8 for one day. You're free to go, but we'll need you back
9 here promptly at 9:00 and we'll --

10 THE WITNESS: Yes, sir.

11 THE COURT: -- pick up from there.

12 THE WITNESS: Okay. I'll see you tomorrow
13 morning. Thank you.

14 THE COURT: I hope you can have a pleasant
15 evening.

16 THE WITNESS: Thank you. You too, sir.

17 THE COURT: All right.

18 MR. RAFFERTY: And, so, other than that, we will
19 get with Mr. Schmidt on 342728 which is yet a third issue
20 about the issue on the Rite-Aid prescription data.

21 THE COURT: Okay.

22 MR. RAFFERTY: Other than that, yes, we're working
23 on getting the documents and we will get them to you in
24 three minutes.

25 THE COURT: Okay. Now can we pull the plug on it

1 for today?

2 MR. MAJESTRO: Your Honor, we have one more
3 housekeeping detail. I'd like to introduce Monique
4 Christenson to the Court.

5 MR. SCHMIDT: Before we do that, I apologize for
6 interrupting. I'd just note that the witness is now passed.

7 MR. RAFFERTY: Yes.

8 MS. CHRISTENSON: Good afternoon. I am here
9 representing City of Huntington. My name is Monique
10 Christenson.

11 I have two deposition designation packets that
12 plaintiffs would move for admission into evidence. And to
13 be clear for the record, there are outstanding objections by
14 defendants that are identified and included for
15 consideration in the packets.

16 MR. HESTER: Could you explain what they are?

17 MS. CHRISTENSON: The parties negotiated and met
18 pursuant to a stipulation to compile deposition designation
19 packets. All the packets contain a flash drive containing
20 digital copies of all the packet materials. They have video
21 files for had witnesses John Gray and Patrick Kelley. It
22 will be video transcripts; the parties' final negotiated
23 designations with objections and responses; parties' final
24 designation exhibit lists; and corresponding objections and
25 replies; and parties' designation exhibits.

1 THE COURT: Well, I'd like to have the video
2 transcripts and written transcripts marked up so I'll know
3 what you're objecting to and what you're not.

4 MS. CHRISTENSON: We have three boxes for you,
5 Your Honor, and two copies pursuant to the discussions with
6 your clerk.

7 THE COURT: Three boxes.

8 MS. CHRISTENSON: One copy for you and one for
9 your clerk.

10 THE COURT: All right.

11 MS. CHRISTENSON: May I submit them at this time?

12 THE COURT: Yes, you may submit them.

13 MR. HESTER: Your Honor, just as a mechanical
14 matter, the objections that we have made don't appear on the
15 same pages as the designations. And if you want us to, we
16 could do the work to put them all in one place if that would
17 be easier for the Court.

18 THE COURT: Well, you need to do everything you
19 can, Mr. Hester, to minimize the possibility I'll get
20 confused.

21 MR. HESTER: We will do our best.

22 THE COURT: And I'm very serious about that. I'm
23 not trying to be funny.

24 MR. HESTER: We understand. What we would like to
25 do is submit a document to the Court that has the objections

1 self-contained.

2 And just for the record, Your Honor, these are the two
3 designations related to these had witnesses, the trade
4 association. And we maintain our overarching objection.

5 And I think it becomes clear from the designations that
6 have been made that the plaintiffs are relying on the
7 substance of the positions that we're taking in relation to
8 the HDA's petitioning activity, filing of briefs,
9 legislature strategies, and the like.

10 We do not think this falls within the scope of the
11 Court's ruling, recognizing that there could be showings
12 related to intent or the like that might be outside the
13 scope of the Noerr-Pennington immunity.

14 We think these designations go directly to the
15 substance of the positions that were being taken by had and,
16 therefore, should be precluded under the Court's ruling,
17 just to make sure that the record is clear on that. But we
18 will make a submission to Your Honor.

19 THE COURT: Okay. Thank you, Mr. Hester.

20 MR. HESTER: Thank you.

21 THE COURT: Thank you, ma'am.

22 Is there anything else to take up before we adjourn
23 until tomorrow morning?

24 Nobody can leave until we get the documents.

25 MR. RAFFERTY: I've got them right here.

1 THE COURT: Well, Allison just excused me, but the
2 rest of you have to stay.

3 (Trial recessed at 5:32 p.m.)
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1 CERTIFICATION:

2 I, Ayme A. Cochran, Official Court
3 Reporter, and I, Lisa A. Cook, Official Court Reporter,
4 certify that the foregoing is a correct transcript from
5 the record of proceedings in the matter of The City of
6 Huntington, et al., Plaintiffs vs. AmerisourceBergen
7 Drug Corporation, et al., Defendants, Civil Action No.
8 3:17-cv-01362 and Civil Action No. 3:17-cv-01665, as
9 reported on May 24, 2021.

10
11 S\Ayme A. Cochran

12 Reporter

13 s\Lisa A. Cook

14 Reporter

15 —

16 May 24, 202117 Date
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